

**ETHICS PROCESS: TESTIMONY OF FORMER SENATOR ABRAHAM A. RIBICOFF AND A PANEL OF ACADEMIC EXPERTS**

Y 4.3: S. HRG. 103-13

Ethics Process: Testimony of Former...

**HEARING**  
BEFORE THE  
**JOINT COMMITTEE ON THE  
ORGANIZATION OF CONGRESS**  
ONE HUNDRED THIRD CONGRESS  
FIRST SESSION

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FEBRUARY 16, 1993



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# ETHICS PROCESS: TESTIMONY OF FORMER SENATOR ABRAHAM A. RIBICOFF AND A PANEL OF ACADEMIC EXPERTS

TUESDAY, FEBRUARY 16, 1993

UNITED STATES CONGRESS,  
JOINT COMMITTEE ON THE ORGANIZATION OF CONGRESS,  
*Washington, DC.*

The Joint Committee met, pursuant to call, at 2:10 p.m., in room HC-5, the Capitol, Senator David L. Boren (co-chairman of the committee) presiding.

Chairman BOREN. I think we are going to go ahead and start. I know there are other Members that are on their way, but Senator Ribicoff, I think we will go ahead and commence.

## OPENING STATEMENT BY HON. DAVID L. BOREN, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Chairman BOREN. This afternoon the Joint Committee holds its last introductory hearing on issues and proposals to reform the Congress. Three weeks ago we began with the joint leadership of the House and Senate. We followed these sessions with three interesting sessions with panels of former Members, current Senators and sitting Members of the House, and this broad sketch of the institution.

What is right and what is wrong has provided much food for thought for the Members of the Joint Committee, as well as for all the Members of Congress. We will be completing, after we hear from former Senator Ribicoff today, with a panel of three from institutions here in Washington, and then we will begin to launch into specific areas of suggestions for reforms, beginning with suggestions for reforms in the ethics process, in a series of hearings after we have completed these introductory hearings.

Today we are joined by a former Senator, Senator Abraham Ribicoff, followed by a panel of distinguished academics.

Senator Howard Baker was to be with us today, but, unfortunately, he cannot attend because of an illness in his family, and we hope to hear from him at a later date.

Abe Ribicoff worked both as Governor of Connecticut and Secretary of Health, Education and Welfare before serving in the Senate. During his 18 years in the Senate, he chaired the Government Affairs Committee and served on the Finance Committee, and the Joint Economic Committee.

It was my privilege to have association with him in two different capacities. As a fellow Senator, and as one from whom I learned a

great deal when I first came to the Senate, I will always be proud of an earlier association with him, and that is as campaign volunteer when I was at Yale and when he was campaigning for election to the United States Senate. After he left the Senate, he continued to serve the public and to serve this institution by chairing the Senate Study Group along with Senator James Pearson.

Their report and their recommendations, which included bold initiatives to change Senate procedures, in many ways are still pending as a document of recommendations before the chamber and before this committee.

So I am very pleased, Senator Ribicoff, that you have agreed to share your thoughts with the Senate and with the Congress, and we very much look forward to your testimony.

We welcome you back.

**STATEMENT OF HON. ABRAHAM A. RIBICOFF, A FORMER U.S.  
SENATOR FROM THE STATE OF CONNECTICUT**

Senator RIBICOFF. Thank you very much.

Good seeing old friends, good ones. I mean you represent what is the best in Congress.

I prepared a text which I submit for the record. In the interest of time, I would like to summarize my remarks.

There is no shortage of ideas on how to reform Congress. Some might look at the numerous proposals before the committee and conclude that reform is impossible. I disagree. I think there is much that can be accomplished as you set yourself to the task of finding and building consensus.

I have had the opportunity to review the testimony of Senator Byrd, Senator Mitchell and Senator Dole; each has presented an excellent, carefully considered series of recommendations.

To be sure, they differ in some respects, but there is also much on which they are in agreement. In such statements you will find the foundation for a consensus.

There is a clear public interest in your work. Indeed, many freshman Members of Congress won their elections on the pledge to reform Congress. In short, you have a clear mandate.

I am hopeful that you will succeed. But you cannot succeed if the energies of this committee are dissipated in political turf battles. Even if the reformers succeed in such fights, they will only set their opponents to work on efforts to undermine reform to political gamesmanship. The partisan bickering that is sure to follow will only serve to lower the public's already low respect for the Congress.

For this reason, I believe that it is important for the committee to address itself to issues where it is possible to reach broad consensus between Majority and Minority interests. If legitimate concerns of the Minority are recognized, then obstructionists are likely to find no audience and little tolerance for their demands. I firmly believe that real reform must begin with consensus.

There are three issues I want to review with you today: Congress needs to take hold of its schedule. There is a clear sense among the public that within Congress, that Congress is out of control and that the legislative process approaches chaos. Members belong to



too many committees and too many subcommittees. There are too many hearings, too many staff, and too much time wasted. These are plain statements of fact.

There is clear agreement on these problems, and I believe that it is possible to achieve agreement on the solutions to these problems. Allow me to suggest some ideas.

A legislative agenda should be established for the House and the Senate by the Congressional leadership in consultation with the President on the majority vote of each House. There will likely be debate over the agenda. Members will differ on the importance to be assigned on any given issue. But it is hard to understand why there should be objection to the idea of establishing an agenda, whatever the agenda might be.

If an agenda were established and followed, it should be possible to avoid the late night and Saturday sessions that reek havoc with the personal lives of Members and the end-of-session rush that marks virtually every Congress. An agenda that allows for careful consideration of legislation would also address the Minority's legitimate desire not to be surprised by scheduling decisions, and would avoid situations in which Members are asked to vote on complex and controversial legislation with little or no advance notice.

In addition, a published agenda for the consideration of bills would encourage timely and focused public debate on issues before the Congress. Moreover, if an agenda were established and followed, I firmly believe there would be much less concern over many procedural reforms.

Two, there are probably too many committees and subcommittees. There is no question that Members hold too many committee assignments. Much of the concern over the fracturing of the Congress might be abated if Members simply were prevented from serving on more than a limited number of committees and the limits were enforced.

In his testimony before this committee, Senator Mitchell stated, "the Senators now collectively hold 48 more full committee assignments than the rules allow." He points out that each extra committee assignment means additional subcommittee assignments. Senator Byrd echoes this concern in his statement.

Senator Mitchell has proposed that the Senate leadership make an agreement to enforce the rules of the 104th Congress. This proposal only makes sense. And as Senators are forced to limit their committee assignments, some committees may well be scaled back or abolished altogether.

These reforms are difficult but attainable. If this committee does nothing more than enable Congress to take hold of its schedule, it will have made a significant contribution to the public good.

Second, Congress must enact campaign reform legislation. If Congress is to reclaim the respect of the American people, it must earn that respect.

Last November, voters in 14 States were so disgusted with Congress that they voted to enact term limits. I personally do not support term limits, but I do believe I understand the frustration and anger that lead many people to vote for such reforms.

I am convinced that Congress must address the issue of campaign reform. The cost of political campaigns has reached obscene

proportions. The need to raise tremendous amounts of money for political campaigns fuels the notion that special interests run the Congress.

But there is another problem; the cost of campaigns keeps good people from seeking public office. Moreover, it drives good people out of office. More than a few Members have elected to retire from Congress rather than put themselves through another grueling cycle of fund-raising campaigns.

Many Members of this committee have been at the vanguard of efforts to reform the campaign financing laws. In particular, Senator David Boren and Congressman Sam Gejdenson have been leaders on this issue.

I have reviewed the legislation that passed Congress last year, and I support it. Its proposals to limit campaign spending, limit PAC contributions, and restrain the abuse of the franking privilege, among others, are solid reforms. They deserve the support of the Congress.

But whether we achieve campaign reform or not, I am encouraged by evidence that television advertising may be losing its luster in political campaigns. In the last presidential election, advertising proved to be of little or no consequence. The three presidential campaigns were largely waged on radio and television talk shows, and the presidential debates attracted record audiences.

These events indicate that the need to spend tremendous amounts of money may be more a matter of perception than reality. There may be some merit, therefore, in the return to old-style "retail politics" campaigns that take a candidate's case directly to the people through town meetings, radio and television talk shows, public debates, and the simple practice of walking the streets of the district and meeting the people.

Now this is by no means a complete answer to the problem. Campaign reform legislation is still needed, but I think individual Members can begin the process of reform even if Congress proves unwilling to rewrite the campaign laws by taking their campaigns back to the streets and taking their message directly to the voters.

There is another matter that concerns me greatly; namely, the negative tone of political campaigns. Personal attack, character assassination and outright lies are far too commonplace in political advertising. Here again, these advertisements do serious damage to the political process.

The public has plainly stated its disgust with this style of campaigning, and yet it continues. Senators Fritz Hollings, Dan Inouye and Jack Danforth have been working for several years to find ways in which to constrain the unbridled use of negative campaign advertising. These efforts deserve support.

In the past, the debate over campaign reform has repeatedly broken down over claims that one side or another is seeking unfair advantage through the device of campaign reform. Here again, I am convinced that there is room for agreement on many issues.

I urge you to agree where you can and to move forward. Congress should seek opportunities to raise the visibility of public policy debates.

I want to read something that Bob Byrd said in his testimony before this committee, because I believe it bears repeating: "One

reason that the hard choices are so difficult for Members of Congress is that the groundwork for acceptance of such choices by the public is rarely laid by extensive debate in the Congress. The less the Senate publicly airs the great issues of the day, the more we leave a vacuum—an information vacuum that will be quickly and willingly filled by self-serving interest groups, media hucksters, misinformation, cliches, inane platitudes and political demagoguery.”

Senator Byrd is right. Congress has ignored its responsibility to inform the public, and it has ceased to be a forum for great public policy debates.

This problem is not simply a Senate problem. Former Congressman Bill Frenzel and others have leveled the same accusation at the House. I believe at the very least, the public dissatisfaction with Congress stems in part from an incomplete understanding of what Congress really does. If Congress can agree upon a legislative agenda, it is a small matter to schedule debates on important issues to occur in prime time, when they can reach a wide audience. In this way, Members of Congress, Majority and Minority alike, will have the opportunity to bring debates on important issues directly into America's living rooms.

If there is a real agenda for congressional action, rather than the haphazard schemes that now prevail, I predict that there will be real debate, and the debates in the halls of Congress will join debates on editorial pages, in classrooms, on college campuses and at the workplace.

In the last presidential election, voter participation increased after years of decline. There are many reasons for this.

I think one reason is that voters were given meaningful opportunities to consider the candidate's view rather than the melange of photo opportunities and 30-second commercials. The American people will eagerly watch and participate in public policy debates, if their political leaders will take seriously their jobs of informing the public and respect them enough to invite them to participate.

I thank you again for this opportunity to come before you. You have much work to do. I know that you will approach this task with an eye toward achieving the kind of long-lasting reform that can only be achieved through the process of negotiation and consensus, that you will refuse any entreaties to make reform a tool for political advantage. There is much that can be done when men and women of goodwill are willing to work together.

Ladies and gentlemen, I look forward to your success.

[The statement of former Senator Ribicoff is printed in the Appendix.]

Chairman BOREN. Thank you very much, Senator Ribicoff.

I am intrigued with the areas in which you have found agreement, and I think there have been common themes as we have now looked at the introductory statements by those that have appeared before us.

There are certainly some areas of agreement. One that you have highlighted is that Members simply cannot serve on too many committees. Senator Byrd called this the fracturing of our attention. We become so splintered that we cannot operate.



I would assume that therefore one of the things you think we ought to put at the top of the list is limiting the number of committees and subcommittees on which Members can serve?

Senator RIBICOFF. Without question.

Chairman BOREN. Now, if we begin with that, the second problem, it seems to me, and it relates to your statement also, that the staff has now grown too large and in a sense we generate work for ourselves. We have, as I have said, unnecessary subcommittees, holding unnecessary hearings, on unnecessary legislation, which then generates mail and interest, and causes all of us to have to keep up with it and track it, and we create work for ourselves, so that we don't have the time to really spend on the important questions of the day.

I am also convinced that by having so many committees and subcommittees, and now we have overlapping jurisdiction in a number of cases, and as you know from your own experience, this means conference committees are getting larger and larger, sometimes 9, 10, 11 committees have partial jurisdiction in a conference, it becomes very unruly between the House and the Senate. And the other problem, it seems to me, is that for a President to try and sit down and really work with Congress, the more fragmented we become, the more difficult it becomes for the President to work with us.

If we can sit down with 8, or 10, 12 leaders of the key committees involved with a piece of legislation, that is possible. But where we have fragmented jurisdiction and we, perhaps, have 150 Members involved, it becomes much, much more difficult for the President to really have a sense of what Congress wants and feels and to work out a consensus between the White House and the Congress.

It seems to me, therefore, that to follow through on what you want to do will not only be necessary to reduce the number of committees on which we serve, but to really take a fundamental look at reducing the number of committees and subcommittees themselves, and in restructuring the jurisdiction so that we don't have overlapping jurisdiction and we parallel between the House and the Senate.

How would you suggest, and you have had a lot of experience here, how would you suggest, from a political point of view, that we go about that process in a way that gives us the greatest chance to succeed?

Should we set a target figure of the number of committees and subcommittees we think is reasonable and then try to set priorities for the committees that seem to be the most important so that we do away with unnecessary committees that way?

Because obviously every time you say abolish a subcommittee, someone chairs that subcommittee, someone is the Ranking Member on that subcommittee. How would you go about it, from a process point of view, in a way that would give us the greatest chance to succeed?

Senator RIBICOFF. Well, you have an outstanding group of men and women from the Senate and the House. All of you carry a lot of clout politically, not only in your home towns, but politically in the Congress.

I was very intrigued, as I said at the beginning, that here you have the Majority and Minority leaders and the President pro tempore, who have come before this committee, and as I read what they have to say, they seem to be pretty much in tune with one another.

Well, with this committee you have got to bring into your discussions the Majority and Minority leaders and the President pro tempore. You have got a lot of clout, and my feeling is that the Congress will go along with you, because of who you are and what you have achieved. And I believe that every sitting person in the Congress realized the problem.

I was very intrigued at finding myself socially at a dinner party in Connecticut or New York, listening to people's appraisal of Congress, and believe me, it is very low. I know what Congress is. I have been a Congressman, I have been a governor, and I have been a Senator, and there are outstanding men and women, and you do one great job.

But you do have a situation where you have been kicked around, in many instances, not deserved. And my feeling is that the public feels that they are entitled to more from the Congress of the United States.

They like their own Congressman or their own Senator, but generally the view that they get is a negative one. And your committee, the careful workmanship that I think you are going—once you finish these hearings, you can accomplish much if you will bring that consensus together.

Now, don't overlook that consensus. I mean you have to satisfy the Majority and the Minority. There are individuals that are going to like it and not like it. But my hunch is that you will come up with a program that will be overwhelmingly supported by the Senators and Congressmen with whom you work day in and day out.

Chairman BOREN. You think there is potential then for us to, if we were to sit down and develop a plan—now the average Senator serves on 12 committees and subcommittees—if we were to say well, that is not reasonable, you couldn't possibly do justice to, say, more than four committees and subcommittees, whatever that figure is.

We have 299. We started back after the reform, as you know, from your own work with 38 standing committees, roughly, 19 in each House, starting in 1947; we are now up to—the subcommittees we have now were almost unknown then. We are now up to 299 committees and subcommittees.

Do you think if we were bold enough to set a figure, whether it is four or five committees and subcommittees in total that someone could serve on conscientiously, instead of 12, whether that figure is 50, 75, or 100 committees and subcommittees, instead of 299, do you think we should try to make an outline like this and then be bold enough to submit it?

Senator RIBICOFF. I surely do. Meanwhile, make sure that each and every Member serves on at least one good committee, one strong committee, where it can get a lot of publicity, and on an issue that is good for his people back home. And I think if you do that, everybody is treated equally, that there will be no preference

that one is going to have two and somebody else is going to have five or six, you can't do it that way. You have to play the game square that everybody will have not more than one or two committees.

Chairman BOREN. We have a study, we have been doing a study of how many committees some people serve on. We have some as high as 16, for example, 20, and so on. So we would have—when you count in subcommittees, the average is 12.

Senator RIBICOFF. Well, you know, Senator Boren, whenever anybody has that many committees, that Congressman or Senator is doing nothing on that committee, the staff is running that committee, and they are going to make work. And there is no way that he can discharge his duties as a Senator or as a Congressman having the responsibility of undertaking the work of those committees.

It just, it just won't work.

Chairman BOREN. Thank you very much.

Senator LUGAR?

Senator LUGAR. Well, Mr. Chairman, Senator Ribicoff, we appreciate your coming and your comments today. I just want to ask this question of you as a veteran Member of the Senate.

You made the comment in response to Senator Boren that Congress is entitled, or the people are entitled to more from their Congressman, and that perception came from the people that you talked to in Connecticut and New York. One dilemma of this situation is that there is also a perception on the part of many Members that their constituents expect so much from them; on even fairly minor points of parochial interests, they must do battle to the death.

For example, in the Senate we had a Senator talking for 16 hours last year at the end of the session, another Senator talking for something close to that, on issues that they knew they were going to lose and they did lose, and yet they felt that this was required by their constituents. Sort of a last effort to indicate how much they cared about these issues.

In fact, some have said that the civility that may have surrounded the Senate, a sense of proportion as to how important issues were as compared to other issues, has been lost altogether. Every issue becomes a death stand by the Member, giving his all for his constituents.

Now, what is your perception as you look at this from outside now? Is this what our constituents anticipate we ought to do with regard to stopping the music of the whole Congress to make a point in behalf of our one district or our State, even our losing effort simply to indicate that we care sufficiently, or is this perceived as foolish and something that ought to be stopped?

Senator RIBICOFF. I think it ought to be stopped. My feeling is that the voter today is savvy and intelligent. I think what he wants more than anything else is the respect of his Congressman or Senator and to be proud of him. I have always felt that the issues facing you on a day-to-day basis are complex and important, and many people don't know what those issues are and what the problems are.

My feeling is that you owe your constituents the opportunity to understand these issues. You are to a great extent a teacher to



them. They don't find it in the press, they don't find it in television, they don't find it in radio. Much that you see is negative, involving parts. And by going home—and all of you that I see here that I know, you do go home, and you do speak and explain what the issues are that are facing the country, what is facing your State and what is facing each and everyone of you. And I think by achieving the respect of your constituents, by a person that cares to take the time to explain it to them, you will not have to do many of the things, say, being up there for 16 hours and try to make a grandstand play to your constituents.

I think that they are smarter than that, they will be smarter than that. And looking around here, you have been around for a long time and you are not being elected and reelected if you don't have the respect of the people of your State.

Senator LUGAR. My follow-up is just this, that you recommended an agenda at the beginning of the session, negotiating even with the White House and by votes. Now at least in the Senate that would only work as a practical matter, as I perceive it, if there is very thoughtful use of the rules. Because in the event that Senators want to use the rules, there is no way I can conceive that an agenda can be set up that would fit any leader's idea of how he would use a week or a day, or what have you.

You know, from your own experience you know how rules can be utilized to stretch out debate or to truncate it or to send it all over the place, unlike the House that has a Rules Committee and has a more orderly situation. So, you know, the balance has always been Senators who do not wish to give up their right to use each rule for the benefit of their constituents to the limit of the law, and yet keep the orderliness that you imply in an agenda, with House, Senate and President.

How do you believe, or are you optimistic enough to believe that Senators could come to a position that they would want to restrict their utilization of the rules in behalf of their constituents to appoint a fitting agenda.

Senator RIBICOFF. If that is their attitude, they don't deserve to be a Senator, to tell you the truth. If that is the viewpoint of what your job is.

Sure, your job is to take care of the problems of your constituency. But I think each and every one of you owe an obligation to your Nation and your country and the problems that you face. You are facing them all the time and they get more and more complex.

But again, I feel that you have the makings of a consensus here for the first time. And I can't help but feel that if you sit down and Mitchell is busy, and Dole is busy, and Byrd is busy, let them sit with you when you sit down and go over these important issues and talk with you. They have got—you have got the obligation to deliver to your constituents. They have got the obligation to deliver to the men that comprise the Majority and Minority, and work it out together.

I know what the Senate can achieve if they make up their mind to achieve it, because they can. And I look around, I know. I was a Congressman, ladies and gentlemen, a number of years ago. My last group of years spent in politics was 18 years in the Senate. And I know who you are, and I know what you can do, and I have

seen you do it against the interests of your constituents when you felt that it was public policy and good for the country to take another stand.

The three of you that I am looking at, I have seen you do that on the Floor time and time again.

Senator LUGAR. Thank you very much.

Chairman BOREN. Thank you very much.

Senator Domenici.

Senator DOMENICI. Senator Ribicoff, let me first apologize for not being present when you opened your remarks. My early failure to be here is part of what is going on around here, more to do than we ought to be choosing to do.

Secondly, I want to tell you that Senator Stevens was here and left. He asked me to personally tell you that he will try to come back, but you would understand his absence in that he is introducing a former staff member who is up for confirmation in another committee, obviously, they wouldn't be here, and he asked me to please tell you that because he very much wanted to welcome you and participate in this discussion.

Let me talk for a minute about the idea of less assignment versus another problem that less assignments might not cure. I am not familiar with the House, at least as familiar as I am with the Senate, and since we are not necessarily going to try to invoke our will on them and them on us, with reference to the things that are just within their institution, I am just going to make an assumption here.

They already serve in the House on far less committees and subcommittees than the United States Senate; is that a fair statement?

Representative DREIER. In most cases.

Senator DOMENICI. I understand the congressional professionals here who have been looking at this and researching it were not in their hands. I don't think House Members who are here would necessarily assume that it is a matter of too many committee assignments in the House that is causing the problem, whatever the problem we are trying to solve.

I think to just talk about lessening assignments on committees and subcommittees, begs the point of whether or not we have too many committees with overlapping jurisdiction. Now I think in that regard, the House had a more serious problem than the Senate.

I have seen us go there with one major committee and maybe two committees kind of dragged along for some part of a bill, and find, Representative Walker, that you have eight committees going to that same conference.

I have seen on health issues that there are at least two, sometimes three. So it seems to me that we have to address the issue of whether or not overlapping jurisdiction—and it is a tough one, because who wants to have less jurisdiction. But to just say less assignments and not create more order to the assignments, orderliness, perhaps I would say, it seems to me to be begging one part of the issue.

Now maybe you do not recollect the complexity of dual jurisdiction and triple jurisdiction and quadruple jurisdiction. I would



assume since we had a very lengthy overlap in service, you and me, we saw a lot of that.

You were fortunate on Government Ops to run through an entire list of reorganizations that you had sole jurisdiction for. I mean that was a very large package, as you recall, and take great credit for. But I tell you today if you are trying to do something in the energy field, you will still have four or five committees in the House on almost anything.

Don't you think we ought to look at that also, or what would your advice be?

Senator RIBICOFF. Yes. I would say that you have to reorganize the executive branch, too, so there won't be overlap.

Senator DOMENICI. Great point.

Senator RIBICOFF. I would say, you know, I was also Secretary of Health, Education and Welfare. I would say that every committee in Congress owned a piece of me. There never was a day that I wasn't testifying before one committee or another. And I was running back and forth; there weren't enough days in the week to be able to accommodate every committee of the House and the Senate.

Now, I think that the time has really come to take a look at the executive—this isn't what you are here for, but as you throw this out to me, I think the time has come to really take a look at the executive branch of our government and to see the conflicts that they have there, and this would—I would say, would take another commission of its own to be able to bring this together. You could then coordinate the committees with the executive branch to make sure that they are talking to one another and working with one another. I think it would be better for the country, it would be good for the executive branch and good for the Congress, too.

I think you raise a very important point and it is worth taking a very serious look at.

Senator DOMENICI. Thank you very much, Senator.

I might just recall, and give my best regards to your wife, one of the most exciting trips we ever took together was to, I think the second—first or second trip by American Senators to the Soviet Union. You were our leader, as I recall.

Senator RIBICOFF. I remember that. Those were a great group of Senators. And I insisted that if I was going along, the Senators were going to take their wives, because we have intelligent wives and they ought to know what is going on in the world, too. I think it was a great trip together with all of you.

Senator DOMENICI. Thanks for your testimony.

Senator RIBICOFF. The Senate is a great institution. I wouldn't want a single day back of those 18 years, and I have a great nostalgia, and I sympathize with what you are trying to achieve and what you are trying to do.

I remember Howard Baker—Howard Baker, when he was Majority Leader, he called me up the Christmas of 1981. I was in Connecticut. He said Abe, I want you to do something for me, and don't say no. So I said Howard, first will you tell me what you don't want me to say no for? He said well, I never realized how tough it was in the Senate until I was a Majority Leader and the problems I got and what we have to do to straighten this out. Well, and I would like you to head up a commission.

I said well, that isn't the way to go about it. You don't need a commission. Just give me one other Senator and you, like Jim Pearson from Kansas, and I like Jim Pearson. What you shouldn't do is try to name me; you better go and get Bob Byrd to name the Democrat. Don't you name the Democrat and the Republican. And he said well, suppose Bob Byrd doesn't appoint you?

I said I won't even say a word to him, he either does it or he doesn't do it. You are going to have to gamble that he has got enough good sense to figure that maybe I would do a good job on this. And he went to Bob Byrd and the first thing Bob Byrd said, suppose I get Abe Ribicoff on my side? So it was done that way.

I think the Senate put together a budget of \$25,000, and, of course, we got—neither Jim Pearson or I got paid for doing anything. I think we only spent \$2,500, and we got a pretty good report out. A lot of that stuff in there you ought to read again, and you can still use a good deal of it.

Senator DOMENICI. Thank you very much.

Thank you, Mr. Chairman.

Chairman BOREN. Thank you very much.

Mr. Emerson.

Representative EMERSON. Thank you.

I, too, want to apologize for being tardy here. We had a couple of votes in the House. You shouldn't feel that we have been neglectful of you alone, because we had both the Majority Leader and the Minority Leader of the House at the table several weeks ago, and the bells rang and we had to leave them to go vote. That is—those kinds of distractions are one of the problems we face around here.

It may seem like a simple thing to people who are not very familiar with the ways of Congress, but I think simple things like that need to be addressed. And it might help alleviate the overall problems that we face.

You have proposed setting a legislative agenda for the Congress, and I think this idea has merit, and it deserves the further exploration of this committee. One idea that I have been toying with that deals with this problem that I have just mentioned is with the schedule in which committees meet without the distraction of Floor hearings and that the House and the Senate meet without the distraction of committee meetings going on at the same time.

One of the things I find most frustrating when I try to focus on an issue to mull over the pros and cons and to really think about the long-term impact of any given proposal as we are starting to focus on it in the committee or in the House is I have to break my concentration and run across the street and vote on something that I haven't been following on that very point in time.

The quality of committee work suffers, and I think that the concept of informed voting on the House Floor suffers immeasurably. I think that the type of agenda that you proposed could incorporate this idea, perhaps scheduling committee meetings for 2 or 3 weeks and then Floor meetings for a couple of weeks.

When I asked Senator Byrd to comment on this idea, however, he was of the opinion that unless there was Floor business scheduled, no one would be in Washington. That you had to have Floor business scheduled with the threat of votes, or Members wouldn't bother to attend committee meetings at all. So I would ask what

you think about this idea in general, and would it be possible to have mandatory attendance in Washington, or is that something we just don't do?

I understand we are supposed to have it, that we are technically not supposed to be paid for days that we are not in Washington when Congress is in session, or at least—yes, when Congress is in session. But couldn't some system of required attendance in Washington be imposed?

You know, I was a page in the Congress many, many years ago, the 83d and the 84th Congresses, and we adjourned at the end of July in those years and Members went back to their constituencies and were among the people. They weren't in Washington year-round.

I don't think we have to be in Washington year-round now, because we have 3-day work weeks in Washington. That is not to say Members don't work seven days a week, because I know they do. But maybe if we focus better on what we are doing here when we are here, how we go about it, that might help.

I would like your reflection.

Senator RIBICOFF. In the back of my mind, I think that—I don't know how long ago—I think that Bob Byrd proposed that Congress would be at work on its schedules and its business 3 weeks out of every month, and the fourth week they would have on their own, so that they would be in Washington, and that then they could spend that week going back to their constituency instead of every weekend back and forth, and where they would cover their district.

I thought that was a pretty good idea. I don't know whatever happened with that.

Does anybody remember when—when Bob suggested that? How long ago was that, do you remember?

Chairman BOREN. 5 or 6 years ago.

Senator RIBICOFF. It seems to me he suggested that, and I thought that was a very, very good idea.

Representative EMERSON. I know the Senate does that. Three weeks on, one week off. I don't have any problem with that; I think that is a good idea.

My problem is that the committees are all meeting at the same time, the respective bodies are meeting, and we spend so much time running back and forth across the street, not really focusing for any great length of time on what we are supposed to focus on.

You know, I can recall, it was in 1985, the Agriculture Committee wanted to report the Farm Bill, a highly-technical piece of legislation, before the August break, and we weren't finished with the budget, and one day we ran back and forth across the street 20-some odd times for a lot of votes on the House Floor, running back to the Agriculture Committee, I mean, it was nothing but disruption.

I mean, no wonder our work product, no wonder the laws that we pass have a lot of flaws in them. We don't concentrate enough, not because we don't want to concentrate, but because there are so many distractions.

Senator RIBICOFF. Well, generally the votes are usually kept in the House and Senate, I believe, for the afternoons. I think the committee should hold its hearings. What I did when I was Chair-

man of committees, we would have the hearings in the morning, and be finished by 12:00 o'clock, when generally the Senate went into session and the House.

Representative EMERSON. That is no longer true.

Senator RIBICOFF. Well, it can be done now. I mean—I think there is a public mood. The public feels that they expect more from Congress.

I think you are having these hearings, and what you are trying to achieve will sit very well with American people, that you recognize that there are deficiencies in your work. They think there is a lot, a lot more deficiencies than there really are, but they think there is a lot of deficiencies.

My feeling is to come out with a constructive, creative program will lift the esteem of the Congress to a greater extent with the American people. I think you have got a great opportunity here and you have got good leadership to make this work. You have got the chance of a lifetime for the Senate and the House to come up with a product that is meaningful and good for the Senate, good for the House and good for the United States of America.

Representative EMERSON. Thank you.

Thank you, Senator.

Chairman BOREN. Thank you very much.

Ms. Dunn?

Representative DUNN. Thank you very much, Mr. Chairman.

Senator, it is a pleasure for me as a freshman to have a chance to listen to you testify before our body. I am being asked to critique a process under which I have just begun to operate, and it has been fascinating to me.

One of the proposals that has come before this committee a few times is the desire to simplify the budget process. In 1983, out of that commission of which you were a Member, there was a suggestion in simplifying the budgeting process, and I am wondering if you could refer to that for us now, critique that for us, and would you offer those proposals in the environment that we have today?

Senator RIBICOFF. I think at that time, my memory goes back to 1983, I am trying to remember. I think that I felt at that time that to really achieve the objective of the budget process, the Budget Committee should consist of membership from the Appropriations Committee that votes the money and the Finance Committee which has to find the money through taxation to finance these projects. And that if you had this committee composed of the Appropriations Committee and the Finance Committee, you would have the two groups that had the responsibility from having a deficit or having a balanced budget.

Now, I have been away from this now for 13 years, so I don't know how that has worked out. But it wasn't done, I don't think. I have forgotten now.

Has any of it changed, how the Budget Committee is constituted?

Chairman BOREN. No, it is still pretty much the same as when it was originally put together.

Senator RIBICOFF. Yes. But I think that is where you have to get the responsibility of spending the money basically and finding the money to spend.

Representative DUNN. Thank you.



Chairman BOREN. Mr. Dreier?

Mr. Walker.

Representative WALKER. Thank you, Mr. Chairman.

I think that your idea of trying to structure some of the committees in the same way that the executive branch is structured, so that we lose some of the overlap, is an intriguing and good suggestion. My concern is that I am not certain that the executive branch is organized all that well at this point.

Senator RIBICOFF. It isn't.

Representative WALKER. And it seems to me the last time that Congress went through a reorganization of the type we are talking about here, it came soon after the Hoover Commission had reorganized the executive branch, and so there was some limited impact on what Congress did based upon what had already been done to restructure and modernize the executive branch.

I am wondering, you know, whether you would want to comment on that particular problem, because it seems to me for us to restructure the Congress right now, based upon where the executive branch is, we would make a terrible mistake, based upon their lack of—

Senator RIBICOFF. Well, I think—you jog my memory. The Hoover Commission did an outstanding job at that time. Don't forget, this country is a different country now than it was then, with many more problems and many more obligations and many different ways to spend money.

But my feeling is, it is time for the executive branch now, and Congress, the executive branch and yourselves could have what the Hoover Commission achieved in that period to take a look at Congress, to look at the executive branch and make some changes.

I know we made quite a few changes in the Governmental Affairs Committee with many issues. I know, I was Secretary of HEW. When I was elected to the United States Senate, I said the one thing I was going to do was take education out of HEW, because there isn't another country in the world—I think next to the Defense Department, we had the biggest bureaucracy at HEW, and then we just took Education and made a different Department out of it, so they could do a good job on both ends.

But I think the time has come in this country to go back and take a strong look at the executive branch. And there is just as much overlap in the executive branch, where different executive functions, they are fighting for jurisdiction, and it complicates the work of the committees on the Congress, and then match up the committees of the Congress with a new executive branch, where they are both talking to the same people on the same subject matter.

Representative WALKER. Well, I think that would be very useful. I see it from the science side. On science and technology policy we have it so bifurcated that it is very difficult to come up with any kind of a consensus on policy. By the time it impacts on a couple of different subcommittees on appropriations, it comes to the Science, Space and Technology Committee, it goes to the Commerce Committee, you really end up with such a mix of policies that no one can understand the direction in which they are moving, and sometimes we have to solve that problem.

Senator RIBICOFF. Mr. Walker, I think you have made a very good suggestion. This is something that you or others should start working on. My feeling is that this is a great opportunity to reorganize the executive branch as well as reorganizing the Congress.

Representative WALKER. Thank you, Mr. Chairman.

Chairman BOREN. Thank you very much.

Mr. Dreier.

Representative DREIER. Thank you very much, Mr. Chairman.

Thank you, Senator Ribicoff, for your very helpful testimony.

You are absolutely right, when you say that we have a chance in a lifetime, because if we don't take strong action here, I believe that we seriously jeopardize the chance to implement the legislative programs that the American people want, whether it is economic growth, deficit reduction, national security, items of health care reform, all of these things need to be addressed.

Many have argued is that the reason they haven't been effectively addressed in the past is that the White House has been controlled by one party and the Congress by another, and there are more than a few of our colleagues here who have indicated that now that we have seen an end to gridlock, with one party controlling both executive and legislative branches of government, that maybe this issue of congressional reform isn't quite as important as it was when we were living under gridlock.

I wonder if you might comment at all on some of those words that have come out?

Senator RIBICOFF. Well, when you say—I don't know. As I read the newspapers and listen to the television, it doesn't mean that a Democratic President might not have some dissent in the Senate with the Democrats. But there is an opportunity, but there doesn't have to be. I was very intrigued at Senator Dole's comment of cooperation last night following the President. And it looks to me like there is a great opportunity for the Democrats and the Republicans, when you are in the reform business that you seem to be in at the present time, you have got a great opportunity to straighten a lot of these things out, because you are in the mood and you happen to have very good leadership.

Representative DREIER. Well, I think that you—it is very flattering what you have said about this committee here, that we have the ability to have such influence over our colleagues, but the fact of the matter is, Chairman Boren has said on more than one occasion that when we come up with our reform package, we will be dining alone in the Senate and House dining rooms, because our colleagues will not be enthusiastically embracing the package which will come from this committee. And it seems to me that as we look at that, there are more than a few committee chairmen who, frankly, Senator Ribicoff, have grabbed me and said Dreier, you are now working on this committee to organize Congress; I want you to know that we have tried to do it in the past on more than a few occasions and we have messed up the situation, so I don't want you tampering with us too much.

I am not going to tell you who those committee chairmen were, but I have a feeling I might be hearing from a couple more. So I guess my question to you since you did such a superb job in dealing with the base closing issue and a variety of other issues, how can

we ensure that this once-in-a-lifetime opportunity doesn't slip away?

Senator RIBICOFF. I would say that if you come out with a good reorganization out of this committee, you will find you will have overwhelming public support across this Nation, and the people that tell you don't screw it up are the people that will be the first in line to vote aye.

Representative DREIER. Well, I certainly hope that you are right, Senator Ribicoff.

Thank you very much.

Chairman BOREN. Thank you, Mr. Dreier.

Senator Lott?

Senator LOTT. Thank you, Mr. Chairman.

Thank you, Senator Ribicoff for being here. You certainly are uniquely qualified to be of assistance to us with your background in Congress and the executive branch.

Just one question, because I know we have other witnesses lined up. I had the responsibility over the past 4 years of serving on the Senate, what we usually refer to as the Ethics Committee, and we are going to have some hearings later on, I guess the next two hearings may be on this question of how we deal with the Ethics Committee, Ethics Committee reform in the Senate.

You also served, I believe, in that role when you were in the Senate. Weren't you the Chairman of the Ethics Committee?

Senator RIBICOFF. I don't think so.

Senator LOTT. You never served on that?

Senator RIBICOFF. No, I don't think so.

Senator REID. Well, you should have.

Senator LOTT. Well, certainly you were the conscience of the Senate at that time. There are a lot of suggestions, including the possibility of bringing in retired Senators or having judges to come in and do that job.

Do you have any thoughts on how it has worked and how we could make it work better in the future?

Senator RIBICOFF. I would say this is really your obligation. If you have got matters in which there is something wrong against the ethics or the laws, that I think you have the responsibility of facing it up—facing up to it and coming in and making the decisions. I don't think—no one likes to sit in judgment on somebody that they know, and somebody that they sit next to, but this is part of your obligation, and I don't think you can slough it off, try to give it to a former Senator.

I don't know a single former Senator, including me, who would want that job.

Senator LOTT. You were the first one we had in mind.

Senator RIBICOFF. I know. All I can tell you, I am easy to be had in the public interest, but not on that one. But I think that is a problem you are going to have to wrestle with. I know it is an unhappy one, with somebody that you know well that stubbed his toe, or her toe, and have you to deal with it. But you are not going to be able to get rid of this burden. This is part of the burden of being a public servant and being a United States Senator.

Senator LOTT. So you say just keep it in the Senate and reform it if you have to, but basically do the job—

Senator RIBICOFF. You are going to have to do it when someone goes wrong.

Senator LOTT. Thank you, Mr. Chairman.

Chairman BOREN. Thank you very much.

Ms. Norton, any questions?

Senator Bryan, any questions?

Senator REID. He is not here; do you mind if I fill in?

Chairman BOREN. I'm sorry, Senator Reid.

Senator REID. I have no questions.

Chairman BOREN. Thank you very much. Do you know if Senator Bryan has any questions?

Senator REID. You are more concerned about him since he became Chairman of the Ethics Committee.

Chairman BOREN. That is where my train of thought went. He has taken over that task.

Thank you, Senator Ribicoff. We really appreciate your being with us.

Senator RIBICOFF. Pleasure to see a lot of my old friends.

Chairman BOREN. I can assure you we have been rereading and the staff has been restudying the recommendations which you and Senator Pierson made previously.

As you said, some of those recommendations are still very current and we could do well to step back and include in our report and in our bill an effort to implement those recommendations.

Senator RIBICOFF. Good luck to you.

Chairman BOREN. And we are going to try to move out on these matters.

Senator RIBICOFF. I think you are going to make it. I am very confident that the time is now to do it. The Senate and House will never have a better opportunity than to do it right in this term of Congress.

Chairman BOREN. And it seems to me if we don't do it now, it will not get done. Let me say this, our strategy, and see if you agree with this. Rather than spend the entire year this year finishing our study, we have one year to exist, we are going to attempt by the summer to finish our recommendations and hopefully present them during this calendar year for action in both Houses.

Senator RIBICOFF. Great. Good luck to you.

Chairman BOREN. Thank you very much.

We now will be joined by a panel of distinguished academicians who will give testimony. Tom Mann, who is the Director of Governmental Studies at The Brookings Institution, Dr. Mann received his Ph.D. at the University of Michigan and served as executive director of the American Political Science Association. He and Norm Ornstein are codirecting the joint Brookings-AEI project on congressional reform entitled "Renewing Congress."

I have already mentioned Norm Ornstein, who is going to be our second witness today, is well-known to all of us: Resident scholar at the American Enterprise Institute, contributor to the MacNeil Lehrer News Hour, and is an election analyst for CBS News, among other posts. He received his Ph.D. from the University of Michigan and served as staff member and then staff director of Senator Stevenson's Committee on Congressional Reform in 1976 and 1977.



The third member of our panel today is Dave Mason, Director of the U.S. Congress Assessment Project at the Heritage Foundation. He also directs the Foundation's executive branch relations—a steady effort as well, which, as you have heard, has been touched upon in some of the questions today of Senator Ribicoff and some of the comments which he has made. He has worked in the legislative and executive branches, including as staff director to our committee member Trent Lott, and in the House Minority Whip's office.

We welcome all three of you and we look forward to your comments and your suggestions for us, and let me say we appreciate the contribution which you have made to the establishment of this committee. I had the privilege of consulting with Mr. Mann and Mr. Ornstein during the process in which we were putting together the legislation. They were certainly very instrumental in helping us draft that legislation and encouraging support for it, and we welcome your thoughts, now that we are in being, as to the directions in which we should proceed.

I don't know if you have discussed amongst yourselves where we will start, but, Mr. Mann, we will start with you.

Representative DREIER. Mr. Chairman, if I could. Since you have mentioned the distinguished academic credentials of my friends, Mann and Ornstein, it is important to note Mr. Mason is a distinguished member of the class of 1979 of Claremont Men's College.

Senator LOTT. What is that?

Mr. MANN. Is that Claremont, Mississippi?

Representative DREIER. Right.

Chairman BOREN. We will give you equal time, Mr. Mason, when the time comes to respond to these inappropriate comments by your colleagues here on the panel.

We will begin with Dr. Mann.

**STATEMENTS OF THOMAS MANN, THE BROOKINGS INSTITUTION;  
NORM ORNSTEIN, THE AMERICAN ENTERPRISE INSTITUTE;  
DAVID MASON, THE HERITAGE FOUNDATION**

#### **STATEMENT OF THOMAS MANN**

Mr. MANN. Mr. Chairman, thank you very much. It really is a privilege to be here. I recall well the time that we met with you and Senator Domenici and Congressmen Hamilton and Gradison to talk about the possibility of launching a Joint Committee on the Organization of Congress. You have worked hard. We have tried to work hard on the other side to make your effort a success, and I hope that our testimony today and our subsequent work will assist in that process.

We genuinely wish you well. We want your effort and the committee's effort to succeed because we feel so strongly about the importance of Congress as the bedrock of American democracy. It is essential that this institution be strengthened, nurtured, and you can play an important role in that process.

Now, you will be relieved to hear that we don't intend to read our statement here this afternoon.

Chairman BOREN. We appreciate receiving your written statement, and we appreciate even more you are not going to read the entire statement today. We will receive the full statement for the record.

Mr. MANN. Thank you very much. Seventy-one pages, which really followed on a first report we issued late last year. As you will gather, we believe that the journey is almost as important as the destination, that our argumentation is as important, if not more important, than our specific recommendations.

We hear a lot, that it is just that simple. We don't think it is just that simple. We think it is complicated. We think the task before you is not at all self-evident, and the real challenge is to think through the complicated problems the Congress faces that you are trying to address, and to really consider the cost and benefits of the solutions that you would put forward.

Our Renewing Congress project which you referred to is designed to marshal outside expertise to weigh the need for reform as well as the cost and benefits of adopting various specific reforms.

As I said, what motivates us is a desire to strengthen this institution, this first branch of government, both as a policy-making body and as a representative institution.

What does that mean? That means the institution has to be able to express the full range of views that exist in this society on matters that come before the national government, but it also has to have the capacity to come to judgment, to come to independent judgment, to make a decision. So you are both a representative body and a policy-making body, and all of your reform proposals ought to be geared toward making sure that happens.

Now, our role is really to prod Congress to enact some reforms, to cast a skeptical eye on some proposals that may come forward as cure-alls to our problems, but which we think, on sober reflection, may not cure so much after all and may bring on some additional problems.

We also think it is important to take a look at the needs of the institution independent of any other agendas, be they partisan or policy or political. If we have a bias, is it that we believe that a strong and effective Congress is absolutely essential to making our government work.

Listen, we are open to radical reforms. It may be the case that some radical changes are really called for in this institution, but what we believe is that a case has to be made for them. They are not self-evident. And what we have been struck by over the years is how weak the argumentation and the support basis for most of the radical reforms that come forward.

We think it is also crucial to sort out the larger external political and social environment from the impediments that are internal to Congress. Staffing, wages, high budget deficits, divided government, public distrust of elites accounts for 90 percent of the problems Congress has with the American people right now. The other 10 percent are those internal to the institution. Now, that is not an argument for not attending to your internal problems, but it is important to put it in perspective.

If you think you are reforming Congress to end so-called gridlock and to make the American people happy with its institution, I

think you are deceiving yourself. You should reform Congress because it needs reforming, because it needs strengthening, because it will operate better at the margin. At the same time, you should also pray the broad array of political forces begin to line up in a way that make it possible for you to cope with this institution.

Now, the challenge, I think, facing the joint committee, is to demonstrate by its very actions that Congress can deliberate seriously about its own organization, procedure and resources and, in so doing, avoid what we see as some of the problems of the larger institution.

What are some of those problems? You are oftentimes hypersensitive to public opinion. You get so scared about the electorate being all riled up that you try to satisfy them every day and every hour. You need to step back from the critique of Congress and say, hey, wait a minute, let's get this right. Let's not be hypersensitive. The framers said we were to refine and enlarge public views, not simply reflect them.

There is also a tendency to play to the press galleries and to play to the media. It is important to step back from that and say, hey, we have a serious job to do. There is always a tendency in Congress for Members to come to the Floor with their minds already made up. They have made commitments and they simply go through the actions, but it is of no consequence. Therefore, instead of holding to preconceived positions, be open to persuasion from your colleagues, even colleagues on the other side of the aisle. It would be a wonderful exercise of deliberation if this committee could do that.

The other problem is that the Members are sometimes too distracted to get below the surface level of the issues. You are seeing and hearing that in your hearing so far, but you have to apply the same critique to your own committee and make sure in grappling with congressional reform you get beneath the surface.

Members are oftentimes more concerned with appearances than with outcomes. Right? Everyone wants to be positioned correctly on issues. That is another thing the joint committee should say, hey, wait a minute, this may look popular to sort of take this position, but maybe it won't really help the institution.

It seems to me Members are often too willing to take positions that strengthen their political position at home but that also hurt the institution in the process. So you have to be asking maybe, as part of our reforms, I am going to take a position that is not real popular, but I am going to explain it to my folks and tell them how it will help the institution, as a whole. In other words, some of the maladies that face this institution that you are trying to wrestle with, also face your committee as you try to go about your work.

I would simply urge you that you apply your image of the Congress to the joint committee itself and, if so, I think you will come out ahead of the game.

Here is what I see as the big problem you have. The public has a democratic critique of this institution, and yet the more you look at this institution, you find that the needs are republican in character. Now, these are all small D's and small R's here. We usually have capital D's and R's when we talk Democrats and Republicans.

Senator STEVENS. We like it the other way.



Mr. MANN. You should like this, Senator Stevens; I am coming out on the side of republican needs rather than democratic critique here.

The public believes Congress is populated by self-serving career politicians out of touch with ordinary Americans and unconcerned with the national interest; right?

Now, if you ask what is really wrong with this institution, I think, upon reflection, you would conclude we need more incentives and more opportunities for genuine deliberation of give and take among colleagues, of bargaining, of attention to major long-term problems and less to short-term and immediate ones, and the need to strengthen the professionalization of this institution.

Seems to me your great challenge is to ensure that the republican needs don't get lost in the democratic critique. And I will tell you it is no easy task to see that that happens.

We have prepared a long statement that addresses the issues that you face; committees, Floor deliberation, the budget process, staffing, relations between the parties, on and on. We hope that discussion is useful to you as you go about your work.

What we would like to do is just, and I would take just a moment more and then Norman will address some of the specific recommendations, is simply raise with you three or four of the issues before you.

The first has to do with committees—and Senator Boren, I know this is an area of enormous interest to you—the reality is that a reasonable division of labor breaks down over time into this excessive fragmentation in which the insatiable demand of Members for more and more pieces of the action and more and more titles on their letterhead leads to a proliferation of assignments to committee and subcommittee units. It is a big problem. You have detailed very well why it is a problem. Periodic reform of the committee system is absolutely essential, and we support it and urge you to push forward with it.

What we think, however, is that you should not make a full realignment of jurisdictions the absolute litmus test as your success as a committee. It is one of eight areas that is extremely important. We think you can make great progress with it. We wish you well. We will offer whatever help we can, but don't set it up as the only part of it.

Our recommendations here are fourfold. One; reduce the number of assignments held by Members in both bodies. In the Senate that means really enforcing—at a minimum, enforcing the existing rules; getting rid of all the exceptions and waivers.

Secondly, we would like to see you move toward a system of Senators having two committees and not three. That is what we would like to see happen. In the House, we would like to see a further reduction in subcommittee assignments by Members, and we think the numbers of subcommittees can be trimmed substantially as well.

Secondly, we think you can do a lot in terms of consolidation and jurisdictional realignment. Our recommendation on that is to work toward a pattern of committees with roughly equal workload. It is not easy to do, but we think you should do it not starting, as you were suggesting with Senator Ribicoff, from scratch and saying

there should be X number of committees and then working to do that, but take the present system and begin amending it, adjusting it.

First of all, bite the bullet and get rid of the select committees. That process has started in the House. It is painful. It ought to be done. Secondly, the House should follow the example of the Senate, taking some of the minor committees and folding them into the major committees. What was done in the Senate was exemplary. It wasn't enough, but the House has a ways to go to catch up to the Senate in that regard.

Third, we think there are two or three areas of major importance that now get lost in the shuffle of cross-committee jurisdictions. Pick out two or three, go to work in consolidating those and some of the existing committees by realigning jurisdictions. We think International Economic Policy is central to that, but there may be other areas as well. So that is the second general strategy.

Third, use ad hoc mechanisms. You will never fix the system entirely. One week after you reform the jurisdictions, there will be new problems. Empower your leaders to appoint ad hoc committees and use these mechanisms to coordinate that jurisdictional spread.

Finally, reform the committee process. You all have to suffer through a lot of hearings, perhaps tedious hearings, as I speak. Hearings may not be the best way to gather information. Maybe you should be holding seminars. Maybe people shouldn't be making statements and talking at you; maybe you should have an opportunity to have discussions, on occasion, instead of sitting there listening to people; getting engaged. Why not experiment with that in your process of the joint committee but encouraging it for the Senate and for the House, the Congress as a whole. I think you would do well to do that.

Final point. Lessons of 1946. We look back on that as a time of great success, but let's be sober about that experience. What happened after that radical consolidation of committee jurisdictions is that about a year after it, the subcommittees began proliferating because of the demands of the workload and demands of individual Members for a piece of the action. You have to find the right balance in which Members have a legitimate opportunity to play an important role in this body as well as for the institution to get its work done. I think that calls for a balance and I think you can accomplish it, and I wish you the best of luck. Thank you.

[The statement of Mr. Mann is printed in the Appendix.]

Chairman BOREN. Thank you very much, Mr. Mann.

What I will do is call on Mr. Ornstein and then Mr. Mason, and then we will ask questions and we will have as many rounds of questions as we need, staying within our 5-minute rule.

Mr. Ornstein?

#### STATEMENT OF NORM ORNSTEIN, AMERICAN ENTERPRISE INSTITUTE

Mr. ORNSTEIN. Thanks, Mr. Chairman. I want to add one little note to what Tom said. It really was a privilege for the two of us to be, in effect, present at the creation, the genesis, of this committee,

and we have, we feel, a strong stake in its flourishing and being successful.

It is also a particular pleasure to follow Abe Ribicoff, who is an exemplar to service of his country and the public, and I hope that is not just a feature of the last generation, and I hope we can find ways to encourage that. And many, many of the areas you will deal with in this process will either encourage or discourage people from devoting a great deal of their lives in pursuing public service.

Let me say it is a pleasure to be in front of Pete Domenici. As you noted when you introduced us, I served as a staff member and then staff director of the Stevenson committee. There were a number of Senators on that committee that worked hard at what was a thankless task, such as what you now face today. He is, obviously, a glutton for punishment to come back for a second round, but he was one I had the privilege of working closely with, and he devoted a lot of time and effort to it, and that experience will be one that you will fall back on, and fall back on for lessons in a variety of ways. I want to mention just a couple of them as we start.

We had enormous success at greatly cutting back on the number of subcommittees and cutting back on the number of assignments. The numbers you mentioned at the beginning, when we started the process for the Senate in 1976, the average number of committee and subcommittee assignments as I recall was 18. We got them cut back to an average of 10.5 and now they are up to 12.

But, of course, the reality is from the day after we imposed serious committee assignment and subcommittee assignment limitations the violations were rife. Forty Senators, right from the day after the resolution, had exemptions and other ways of violating the assignment limitations.

When another committee was created in the early 1980s that then-Senator Dan Quayle headed up, its major recommendation was basically to enforce your own rules, and, obviously, nobody listened to that and, clearly, it is sobering, in a sense, that changing the rules alone won't do it.

But that is one of the strongest recommendations that one can make right now, if you are going to have any impact here, because the fragmentation is, obviously, far, far worse.

A second point with regard to the select committees. I want to get a history on the table that I think will be important for you, particularly given the news reports that the Chairman of the Indian Affairs Committee is trying to make that committee permanent in anticipation of an effort, perhaps on your part, to consider the select committees again.

We, first of all, had recommended all select committees in the Senate be abolished at the time, and we had, at best, checkered success.

I was directly involved with the Indian Affairs Committee, and I want you to know the history. There was no Indian Affairs Committee before 1976. The jurisdiction was somewhat fragmented, but we had expected we would consolidate it in the Interior Committee. At the time, there was an executive commission that was coming out with a report on Indian Affairs, and Senator Abourezk came to me, as a staff member responsible for those particular areas, and said, look, we really need some central place where we can consider



the recommendations of this executive commission; just create a committee for 2 years; that is all we need, and I promise you that it will then be over with and we can send it back.

And it is, obviously, the history of these things that we get committees created for 2 years. This was in 1977. Fifteen years later, we not only have the committee continuing but an effort to make it permanent. So keep that in mind when you go back to the select committees.

One final quick point on the committee process itself. Senator Boren, you are talking about the possibility of dramatic or radical reform. As Tom said, we don't shrink from that prospect, but, in the end, you will have to consider the cost and the benefits of all of the different things you will go after.

As an exercise, a serious one, back in 1977, 1976 and 1977, I actually came up with a plan to consolidate the Senate down to five committees with 20 Members apiece; one on human resources, one on natural resources, one on financial resources, one on international resources, and one on governmental resources. That plan is available and you can examine it, if you want.

Mr. MANN. But no one would serve on governmental resources.

Mr. ORNSTEIN. And you can actually divide the committees fairly easily in that fashion. Obviously, for whatever advantage you have of a clean move in that direction, you are going to have many other problems if you wanted to move in that kind of a direction. That turned out at one level. We proposed an alternative that was no change and, surprisingly enough, we ended you up with the middle plan.

Now, enough on that, at least for now. Let me turn to some of the specific areas. In the 71 pages that we have given you, which is not just testimony, but the first draft of the second full report that we will submit, and submit to you more broadly for consideration, we have a huge number of recommendations across the range of areas, some small and large, and we will not detail all of them today. We will turn this into a full-blown report and then give you at least one more before your work is done and our work is done with our Renewing Congress project, that is the joint project of our institutions, and that we direct.

There are some areas that we have written about here I would like to address in a little more detail because they are so significant and timely. One is the budget process, which I know is a particular concern to many of you, and we have spent a great deal of time thinking that one through and we have some ideas we would like to lay out on the table. Another is staff, which is, of course, of great concern to the public, and we want to throw a few things out there that deal with the broader and narrower issues. Third is ethics, which I know you will take up in your next wave.

And, by the way, getting back to one of the things Tom mentioned, you might consider as you go to the next level of hearings in specific areas, experimenting, yourself, with some of these formats.

We are sitting at, in effect, a table, instead of in the usual fashion, with Members above and witnesses below. We are following the more typical format. And it may well be some variation of the summit format President Clinton used, with brief presentations

and then a lot of give and take. With a lot of people, it might be a better way to elicit information and have more opportunity to deliberate yourself. So I would think about that.

We want to talk about ethics, not just in terms of the ethics process per se, but we also want to address the question which is so much in the public mind of Congress being "exempt" from the laws that applies to others and with the suggestion of that, and then if there is time, a minute or two on the Senate itself.

We addressed in our first report much more on the House, and we have a series of some specifics recommendations about the Senate, especially Floor procedures. I will see what we can get through in the time we have here.

The budget process, or more broadly, the series of processes that contributes to the budget. We have, I think, about 10 or 12 pages in our report on this. I won't get into every detail.

To begin with, Congress has two stakes in the budget process. You want a progression that serves the Nation's needs with a reasonable balance and the desire for government to do things, to lower taxes and keep deficits low, and at the same time you have to make sure that the budget process doesn't overwhelm and dominate everything else and basically paralyze the institution entirely.

Obviously, through the last decade or more, nobody has been terribly satisfied that either of these goals have been met very well, and one of the results has been that we have tinkered endlessly with this process through several iterations of change and reform, none of which have made us feel better. Indeed, for the most part, the headache has just gotten worse. That, in and of itself, is sobering, obviously.

We have to think carefully about the changes that we implement and whether we will have unintended consequences or whether we will in the end complicate the process even more by adding on layers.

At the same time, we have to remember that the dissatisfaction with the process was not simply a dissatisfaction with the process; it was a product of broader societal and political trends that included 12 years of divided government and a whole series of other things going on in the country and in the political process that probably would have made no budget process workable.

As long as we had great differences in the priorities between the President and each of the two Houses of Congress and between the parties, there was no magic formula and no magic bullet that was going to make things work dramatically better.

Now, that is not to say we cannot really make serious changes that will improve this process looking to a new era, not just for whatever period of time we have united government ahead, but also thinking about what can work in a variety of political situations and with a variety of constraints and limitations and what exists on the budget.

Now, if you think about the way in which you can handle the budget process to deal with the goal of deficit reduction, in effect, we have three basic models available to us for Congress. The first is the normal legislative process where you have annual appropriations that you can cut back, authorizing committees that can



report legislation that will reduce entitlements and raise taxes, and you don't need anything else.

That is the way it worked before 1974, obviously, and before we had a budget process in place. And when it did work, it worked basically because the President set standards through the executive branch and Congress reacted.

Congress didn't like that, in the end, so we made changes and moved to the congressional budget process which had budget committees that would draft resolutions and debate and then a conference would approve them, in an ideal way, and then we would have a reconciliation package put together and passed.

That, in a sense, is the way things worked in the 1980 to 1984 period. Basically, we had a budget resolution that tried to set a standard because the President's budget was deemed unacceptable from the beginning. So we had a counterproposal out there.

The third mechanism is one where you have some informal processes that intervene. We have budget summits or we have some kind of long-term trigger systems that trigger consequences if certain goals are not met. So you have Congress and the President agreeing on long-term deficit reduction targets, and then there is some awful threat put in place if you don't meet those targets. Disaster presumably occurs. That is the Gramm-Rudman-Hollings model.

Or you have the equivalent of the reconciliation legislation that determines the appropriations, 302(a) levels, in advance. You have a series of appropriation caps and you create procedures that effectively prevent you from backing out of the deal. That is what you created with the 1990 Budget Enforcement Act.

Now, each approach is clearly a reaction to the fact that both the President's budget and the budget resolution really had become meaningless. Efforts to avoid blame or push the finger onto the other guy forced the other branch to take the tough action and it didn't work. It was clear from that the only way to make it work was to force negotiation between the different parties in this process.

Now, if we are going to reform this process, it seems to me we have to start with the lessons we have learned from this third mode, what we have learned from 1985 on, from the Budget Enforcement Act, from Gramm-Rudman and so on.

And what can we learn? Well, despite all of the vilification that it has taken, the BEA had some notable successes, and there are things we can draw on from that.

The first is that when you can set a multiyear agreement; when you can avoid the year-to-year frictions that inevitably come up, it is a very useful process. You cannot always do that, and it takes particular circumstances when you can, but the multiyear aspect of the BEA has so far worked quite well.

At the same time, it seems to me the lesson of the BEA is it is much easier to design rules to prevent action than it is to force action, as in Gramm-Rudman-Hollings. The fixed targets and the disaster that loomed with Gramm-Rudman didn't work because the incentives were overwhelming to avoid taking those tough steps and to find sham ways of avoiding them. No matter what kind of

procedure you devise, clever minds will be able to find ways to get around it in this fashion.

It has been striking to us the degree to which that aspect of the BEA that keeps you from taking action has, in fact, worked reasonably well. May not have had the stunning success lots of people hoped that it would, but, in a procedural sense, there are lessons to be learned from this. And we think, in fact, that the action taken by President Clinton, that he just took in holding to the BEA and not going back to a Gramm-Rudman-type approach was the right thing for him to do.

Now, a couple of other things I want to say with regard to the budget process that follow our testimony, many of the reforms that people suggest now want to greatly enhance the President's authority. A lot of the reaction out there, and this is true, of course, with many of the areas you have to deal with, are people want to reform Congress by hamstringing or greatly reducing its role to enhance the role of the President. We don't like that idea.

We think the system works best when you have strong institutions at both ends of Pennsylvania Avenue, and, for that reason, we are skeptical about, for example, the line-item veto. We do not support a line-item veto, and, frankly, all of the problems that we see with the line-item veto, and we have written about them before, they are in the report, I won't go into great detail, are true of an enhanced rescission authority, which, in fact, is even more of a raid on congressional authority than the line-item veto.

We were a little surprised that some of the people who wanted a line-item veto have pooh-poohed the notion of an enhanced rescission, which would enable the President to get into more detail and tinker than with the line-item veto. We don't like either. We do think, however, that the idea of an expedited rescission is something well worth doing and taking a look at, if you design it very carefully.

The way the process is now designed, you have ample authority and reason for Congress to simply avoid ever voting on a rescission. Presidents can propose them and they will die without any action being taken. Finding a process where you can guarantee votes for the President on rescissions, as long as you make this a process where a President cannot use it to send out thousands of them so that you are overwhelmed by votes, so that you can group them in some reasonable fashion, is something that is well worth your time and while. And working through that would be a reasonable way to give the President the authority that he deserves and ought to have and also force you to think through some of the elements that a rescission should force you to work through.

A couple of other items that I wanted to discuss, the reconciliation process and the whole budget resolution itself. You should look at what the strengths and weaknesses of a budget resolution per se are. A budget resolution is not going to, in our experience with it, enforce honesty in budgeting. It hasn't. When a president fudges the numbers, Congress isn't going to be there to be honest. And, frankly, an awful lot of the process provides nothing but encouragement for everybody to fudge the numbers and no incentives not to, and that is not good.

Secondly, a budget resolution can enforce agreement where there is none. You cannot jam something down the President's throat, as he cannot jam it down yours. So there is no particular overwhelming reason to focus everything around a budget process, but neither is there reason necessarily to simply scrap it and turn to something else entirely.

What you should do, in our judgment, is to look carefully at the reconciliation process, which has become a key way of making this process work, if you can, and there are ways of altering that to strengthen it. You should try to come up with some better score-keeping rules to enforce honesty in the reconciliation process, which is also promised savings that have simply not been there. If you can provide some ground rules where you can measure those savings to begin with, so when they are enforced they are actually enforced, you will do very good things.

Another recommendation we would make, and it is a tough one but a strong one, annually appropriated programs should be subject to reconciliation. Up to this point, it has really, outside of 1981, when it was tried and then the authorizers basically went crazy, they didn't like it, said it was a raid on them, basically we have confined reconciliation to entitlements and revenues.

Well, the assumption has been that the appropriators would X-out programs, would zero them out where it was appropriate. And, frankly, the dynamics in the congressional process is that will not simply occur. They are not going to step on authorizers in that fashion, and we don't have many opportunities to look at programs and seriously consider whether they should be eliminated and move in a different direction.

We need a different incentive, even if there are not large numbers of programs to be X'd out. The Reagan experience in 1981 was a good one in forcing us to look at whether programs really ought to go entirely, some programs, and we have abandoned that. If you subject every aspect of this process, including annually appropriated programs to reconciliation, you will get back to it and you will find, perhaps, that the pressure on low priority programs will be greater, and that would be a salutary task.

Finally, let me say we have to find mechanisms to energize the authorizing committees. The dissatisfaction with the budget process inside Congress has come largely from the authorizing committees because they, by and large, have been the stepchildren in this process. The budget committees, the appropriations committees, the revenue committees and, with an odd exception here and there, like Energy and Commerce in the House, have been the committees where the action has been. The authorizers have been left out.

We think we should move more and more towards multiyear authorizations, where we can, to take away some of the pressure. A good part of the reason that authorizers have problems is budget resolution appropriations and tax bills that have to move. Those trains are going to leave the station and arrive at a destination and they have crowded out a lot of what the authorizers have done.

But, beyond that, we make another suggestion, which is that you consider, in both Houses, rules that will not allow appropriations bills to come onto the Floor before June 1 and leave the early period for authorizers to move. Make sure you keep track of these



things and let leaders, working through the Speaker's working groups in the House and steering and policy committees in the Senate, make sure that the authorizers do their jobs, have time to get their issues out there and consider them before you move to appropriations. That would change the workload around here and probably work in a better fashion.

Now, those are all suggestions that get into the meat of the process. We have not, and very explicitly not, recommended a dramatic or radical change. Clearly, there is a lot of talk of that in the air right now, including eliminating one whole layer of the process, eliminating the appropriations process seems to be what many teams, including Senator Kassebaum, who has been thinking about this for a number of years, has in mind.

Our guess would be if you were to go back and start from ground zero and create a process, you would have fewer layers. If you could start from scratch, you wouldn't have all the layers that you have now. But when you go about thinking through how you are going to amend the budget process, you will have to look carefully at the cost that would be entailed for that kind of nuclear warfare with the benefits you would end up with in terms of what it would do in improving the process and the outcomes, and I am highly skeptical your cost benefit analysis will lead you in that direction. If it does not, then you should look at some of these changes as a way of improving the process internally, striking a different balance, and both within the institutions and with the President in a fashion we would find a better one.

Some quick comments on staff and ethics and the Senate. We are going to do more in the staff area. This is a very tough problem. Clearly, the demand for sizable cuts in congressional staff will be very great. Made greater by the President's own move to cut staff inside the executive branch. It is a clear target for talk show hosts and everybody else out there.

Savings can be made, cuts can be made, no question, but first and foremost, we would urge you to avoid the pressure for across-the-board cuts, which we think would be disastrous. Inevitably, what across-the-board cuts in staff will do is damage those units that have operated in the leanest and most efficient fashion and basically reward the fat. So be very careful where you decide to make staff cuts.

And what you should do is not do this, first of all, as an economy measure. The goal here should be to make sure that Congress can fulfill its roles as the framers set them out, as we all want to see them fulfilled in the most efficient manner possible. You do not want to cut staff where you might have a small dollar savings when it would end up damaging an essential function of Congress. That would be the most penny-wise and pound-foolish approach you could take.

Having said that, we do believe that you could make some measured cuts in personal staffs in the House, as we have suggested, moving in 18 to 15 of the permanent full-time staff, which, by the way, would not be a dramatic change since the average is barely over 15 and there are not that many offices that have that problem.

And while the Senate is very different because you have different sizes for each State, you need to go back and think through what functions the individual office ought to be performing and whether you need all these people to do those functions.

What we recommended for the House, and what I think is also appropriate for the Senate, is that you create an office that can handle not the essential mail that you get from your constituents, the handwritten mail, the letters that come in from individuals, not the individual casework. That becomes an important part of the process of representation and also leads to ideas for changing policy. We do not believe for a minute that you are going to eliminate the mail and casework functions in your offices, but a lot of that doesn't have to be done in the individual office.

There are cases, for example, that end up being the equivalent of class actions where large numbers of people are involved. There is mail that now is generated from the outside that, in effect, is bulk mail. If you shunted some of those functions off to a centralized office that could handle it efficiently, you could make prudent cuts in your staffs; people who now are working extremely hard, every one of them, working long hours and not for huge pay, but you could make those changes and you could make your offices more efficient. And if it made you think what you should do as individual Members and what you could handle internally, that would be a useful function.

There are other areas you can make changes: You could make changes by getting back to the across-the-board issues. There are many areas in committees that are understaffed, where you have to deal with overseeing hundreds of billions of dollars and yet you have one or two people that have to deal with that.

Don't go across the board. Look individually at committees. Do an audit, as best you can, to see where you can make prudent cuts and where you cannot, because we also believe that Congress has become too individualized and the focus has gone out too much to the individual Members.

We think one place you could look for cuts in both the House and Senate is the so-called associate staff, what became known in the Senate as the S. Res. 50 and S. Res. 4 staff. The individual committee staffers. Nice for individual Members to have, but individual Members have added to their own enterprise and decentralized the process further. And you can probably make cuts there if you managed to have a central repository of staff on committees that were available to all Members, Majority and Minority.

And, finally, a couple of words about the support agencies. You have four support agencies in this institution where you have group functions, and they have generally had great success, although there has been some controversy about them. I would mention a couple of areas where we think reforms would be very useful.

First, there is no incentive for individual Members or staffers to step back when they are about to initiate a request with GAO or a request for a study from CRS to say, wait a minute, this is going to cost a lot of time and money because it doesn't cost you a dime. All it takes is a phone call or sometimes a meeting or a letter. So you might generate a \$60,000 or \$100,000 study from GAO. Why not?

Or you might take things that shouldn't be done by Congress or by an individual office and shove them onto CRS; often individual constituent types of things.

In businesses across the country, they are moving towards internal accounting mechanisms, or internal disciplinary mechanisms where you have to pay some price; where you have to think twice before doing that. And we think you should consider a voucher system or some internal accounting device or, maybe even better, having some amount taken out of your Clerk-hire allowances if you go to request a study from GAO or from CRS, depending on what the cost of that study is. You would probably end up with a dramatic reduction and also a dramatic reduction in the studies that involve enormous overlap in this process.

The second point, the Office of Technology Assessment has set up a different model than the other support agencies. It, in effect, created a small core staff and when individual studies come up, it reaches out to panels of outside experts to take on those issues. That is a model that should be applied more readily and regularly to GAO and CRS.

We have all kinds of examples of experts in particular areas who are there full time in those agencies who may go through years where their areas really don't come up very much. Now, they are there in place when they do, but it is an enormous waste of resources that can probably be dealt with more efficiently by having smaller core staffs and then reach out to the outside. It is a small form of privatization, in a sense, but one that might make a lot of sense as you go further down the road.

A few quick comments on ethics. We have been on record, as most of you know, for a long time, as believing that the process in which you deal with alleged ethical violations by Members of the House and Senate and others who are attached to the bodies is out of whack.

You have to balance what is your clear constitutional responsibility to judge your own with the fact that you end up taking an enormous share of the talent in these two bodies and having them spend most of their time at different periods in those areas and away from what they are here for, which is to legislate. And you are in a no-win situation.

When Members act as prosecutor, judge and jury on their colleagues, no matter what, you are going to be condemned for conflicts of interest, whether you are too easy or too hard. Everybody has his or her own career to some degree or other wrapped up with the success or failure of the individuals in front of you.

In the final analysis, you have to make those judgments collectively, but we strongly believe that you can make this process work better in a way that will improve the public image of the institution by moving to having the initial investigation, hearings and initial recommendations made by a panel of outsiders that consist primarily of former Members.

We have evolved over time from a permanent committee to the suggestion that what you do is create a pool of former House Members for the House, Senators for the Senate, and others who have relevant experience. We are against the idea of judges, because this is inherently a political institution, and the questions of how you



deal with your ethics have to be different in some ways than for institutions that are not political.

It should be those who have some connection with the process and understand the nature of the Congress as an institution, but who are not faced with the immediate conflicts of interest.

Create that pool and, then, when a case comes up where an individual House Member or Senator has an allegation brought, have the leaders appoint, say Majority and Minority leader would each appoint five Members from that pool so that you could include in that pool people who are lawyers or lobbyists who in some areas might have conflicts of interest themselves, but who in others might not and might be perfectly good choices for that. And if you have a large group of people where the commitment of time is not overwhelming, just for a brief period, you have the opportunity to do it.

Now, just to take an example, and it is a painful one and a difficult one, if the Packwood case had that kind of process in place, where you had outsiders considering all the evidence and holding the hearings, it seems to me it would be a much less difficult process for the Senate. As it is now, you are going to take some of the best and brightest Senators at a time when you are going through this confirmation process of thousands of people, when you are dealing with the difficult and important choices on the budget and the economic issues as they move forward, and they are going to have to spend weeks and months of their time dealing with these allegations. That is 6 percent of the institution right off the bat. That is not a wise way to use your resources.

If you have outsiders handling it in that fashion, you can preserve your constitutional responsibility. The recommendations go back to the Senate or the House, as the case may be, and you have to make the ultimate judgment, but you can treat it with enough distance and yet enough familiarity that you will not put yourself in the hands of the wolves.

And, by the way, we think this is a good substitute for the process that has developed over the years, which is these independent counsel, who have their own ambitions often and their own desires and can go off away from the process as a different balance. And we would strongly urge you move forward with that.

We also believe you should move quickly towards creating an office of congressional compliance that would take the functions of the House and Senate Offices of Fair Employment Practices and broaden them to include all of the areas where Congress itself does not have an executive branch enforcement of violations of the laws that exist.

There is good reason to pay close attention to the separation of powers argument that has been made about having Congress not have laws apply to itself where executive agencies could apply individual penalties to individual Members. The opportunity for mischief is far too great. But what you do need is a strong and meaningful branch of the Congress itself, with some distance—don't get individual Members directly involved—that can first go back through the laws and see where you need to change the laws themselves, and then can apply standards that are appropriate.

They cannot be identical for the Congress, a political body, as they are for businesses out there, but, wherever possible, the letter of the law ought to be applied and, wherever not possible, the spirit of the law. Start with that process and then move. And I would urge you to get ahead of the curve on this one before it gets forced upon you so it looks as if you are taking action ahead of time.

Now, I don't want to go on any longer in this initial part. Let me say we do have a lot of recommendations about expediting business on the Senate Floor. We endorse what Senator Mitchell suggested strongly and would go further in trying to make the Senate be able to act when it is appropriate to act while still balancing the needs of individual Members.

Thank you very much.

Chairman BOREN. Thank you very much. You have given us many good ideas to think about.

Mr. Mason?

#### STATEMENT OF DAVID MASON, THE HERITAGE FOUNDATION

Mr. MASON. First off, let me say, Senator Boren and Members, I am delighted to be here. I want to thank the committee members for the opportunity to talk to you and I will try to keep my initial remarks brief.

I would note in a lot of the places that Norm went into, in my written testimony and in other things we have done, there are some disagreements on the specifics, and I won't go down those, except to note there are differences in views. But one of the encouraging things to me is that, as Senator Ribicoff noted, there is a lot more agreement in some of these general areas than might be evident from looking at some of the specifics. So as the committee goes through this, if you can concentrate in those areas, you may have some good successes and you may even surprise yourself.

I want to talk to you about context and then suggest a theme and address just one specific recommendation. You have talked a lot about the historical context and the Monroney committee and all these others, but the immediate political context which has been brought up a couple of times is term limits. I know most of you don't support term limits, but you should at least think about term limits as the context for your work because that is the expression of where the public is and what the public thinks.

And, frankly, if you want to avoid term limits, this committee is probably the best chance you are going to have. Because if you clean up your own act and you reform things, it will relieve a lot of the pressure for term limits.

So I would say make no small plans. We do differ on this question of do you go for the big plan or the little plan. I think you have an opportunity to go for the big plan and I think you should do that. You also should avoid treating term limits or other expressions of public dissatisfaction with Congress as kind of a PR problem, something to be solved.

In fact, when you look at this as, when you say the public viewpoint, I don't know what the committee's phrasing is, as one of eight specific categories you are going to look at, you may even want to develop that as an area you will look at recommendations.



Because this is not a problem that will really be solved by reprinting how our laws are going to be made or doing C-SPAN seminars or something like that, but, rather, it is kind of a body of evidence, and you ought to think—the public does, indeed, have a pretty good understanding of some of the problems and you should look at them as one of the indicators of what you ought to be doing.

Now, on the theme, and I may be just being too simplistic here, but I think you should think about legislating as your central task. I mean, after all, that is what Congress is supposed to do. And I have said Congress is a legislature that doesn't legislate. That is overstating the case a bit, obviously, but I think there are a couple of ways in which it is appropriate to say that Congress now doesn't pay enough attention to legislating.

If I am not mistaken, it is a lot of what Senator Byrd, for instance, has to say when he says you need full-time Senators. You have so many distractions you cannot get to your essential tasks. One of the ways are the many nonlegislative things that you and your staff are engaged in all the time everyday, and so you should look at ways to reduce those.

Casework is a pretty obvious thing. And I know there is a lot of debate about how essential that is as a congressional function. Frankly, I would fall down on the side that it is something that, if you really wanted to, Congress would have to be very little involved in; but certainly it is something that ought to be probably a lesser priority than the legislative work.

But the other thing you should think about is what composes legislation at all. And if you don't have a broad theme like this, or a way to put your recommendations together, then kind of doing one from column A and one from column B I don't think will work. A couple of examples to look at what I am talking about by legislation.

In 1956, you had the first Federal Aid Highway Act. It was 24 pages long. The section describing how the——

Chairman BOREN. That is right.

Mr. MASON. The section describing how the interstate highways were to be built and planned was 11 pages and nowhere in the act was any specific State or locality mentioned, except it did say the District of Columbia and Puerto Rico will be treated as a State for purposes of the act. In 1991, you had the Intermodal Surface Transportation Efficiency Act. It was 298 pages of small print. There was a 186-page report adding more details.

In terms of the comparability of the cost you spent on the bill, the 1991 act was bigger than the 1956 act, even after allowing for inflation, and yet when you come back 35 years from now and say what did we get out of that 1991 bill, it is not going to be anything like the 1956 act.

So I think that is an illustration of where you have gone in legislation and the problems that can be created when you get so far down in the micromanagement of pork business that Congress is a loser.

So when I say that Congress needs to stop doing things, some of the things that it is doing in order to concentrate more on its essential legislative task, that is not to say it is to the detriment of

Congress, but, in fact, that by cutting back on certain activities, you can become more powerful overall.

The New York Times last week talked about the original Clean Air Act being a page and a half and the latest renewal 313 pages. Obviously, things are a little more complex in that area than when you started, but there is probably a mean or a median somewhere.

Chairman BOREN. How do you build into the system a mechanism for discouraging us from going into this kind of micromanagement or pork barreling projects and so on? Is there, other than self-restraint, which I think we all understand should be practiced, is there any institutional structural way in which we can create incentives for not behaving in this way?

Mr. MASON. One of the things you can look carefully at is conference committees. That is where a lot of this creeps in and it is allowed to come in there because you don't have any oversight and votes. The conference committees fundamentally meet in private. The meetings are announced late. They are in small rooms. When they are not actually closed, it is hard for people to get in. A lot of times things crop up in conference committees that are not in either version of the bill.

If you had stricter enforcement of the rules that already exist—you come in with 10 projects from the Senate and 20 from the House and you come out with 50; and the argument is we are, overall, still within the scope of the bill—but if you had stricter enforcements of those rules, or the opportunity for separate votes, that would be one kind of mechanism you could go at it.

Senator DOMENICI. Could I ask this or make this observation and see if you agree?

When speaking of conferences, it would be helpful if we went there with the same body of law, too. What is happening, part of what you are suggesting happens is because the bill coming out of one House and the other has, is not in one jurisdictional area. Coming out of one body, it will have many tentacles.

Mr. MASON. This gets far afield of what I was thinking about, but a lot of State legislatures have a single subject rule. Omnibus bills are really a big problem for you to deal with, and if you want to look at that, that is a productive area to explore. Is there a way you can chop up legislation into more manageable sized pieces?

You also, occasionally though, have the opposite trend with legislation, and that is you get so general that it is hard to tell what Congress meant. The Americans With Disabilities Act, I think, is a good example of a very well intentioned law, but the fundamental requirement is that businesses have to make reasonable accommodations for disabled workers as long as it is not an undue hardship. And when the bill came up, there were amendments to define reasonable accommodations and undue hardships. And the amendments were rejected largely because, to my view, Congress didn't want to get into the details on that.

And I think you have just the opposite problem there, because, as a result, the regulatory agencies are going to be the ones that define what is a crime. Under the ADA, that may not be a huge problem. It will be a big financial burden, regulatory burden. A lot of court cases. But where this can take you is a recent wetlands case where you have a man in jail now for a wetlands violation

where the law nowhere refers to wetlands. The law refers to navigable waterways.

Whatever you think about environmental crimes, I think you can probably agree that Congress or the State legislature ought to be deciding about what people go to jail for and not the regulatory agencies by later definitions, and this is something you can come back and look at.

So when you pass those general laws like that, you really violate the right of the public to the equal protection of the laws. You do it in one of two ways: Either the law is so specific that it applied to every person and every circumstance and every town in a different way—that is with the highway bill and the pork—or it is so general that you don't know until you have violated it what the requirements of the law are. So I think it is really a fundamental protection of a democratic government that you are violating and you should look at some ways to get some focus there.

I think if you take that as a theme, it will start to throw some of the specific proposals into relief. Give you one example, and that is on this question of debate. I think everybody is in agreement there is not enough good substantive debate about great issues of the day. But one of the best examples in recent times of a good healthy debate was the debate over the Persian Gulf War and the use of force there.

One of the reasons that was such, I think, a good debate is that at the end of that debate there was a specific legislative resolution authorizing the use of force. It was an up or down vote. You had a clear choice. You had an end point. It was a big issue and it was going to be decided. The focus that was brought to the process of debate by that definite end and by that vote was very productive in creating the kind of debate you are looking for.

So if you are looking to create debate, I would say stay away from something like an Oxford Union-style debate, which is not connected to the legislative process, and look for ways to tie the debate to actual votes and decisions and committees. People show up to the Floor for votes, they show up to committees for markup, they show up when there are things to be done. So if you can schedule debates or involve debates with real action, you are going to get a healthier more vigorous debate.

A couple of the other specific recommendations that have been discussed that, again, might be thrown into relief somewhat by a focus on legislation casework. Bill Frenzel said you should fire all the caseworkers. I think fundamentally I would agree, but certainly it is an area to be cut back on. There are a lot of mechanisms you could look at; whether an ombudsman's office in CRS, whether you make the agencies do it, and I guess the fundamental issue is this: If all of these social security checks are being lost in the mail, and this is the example we hear all the time, then something is wrong with the Social Security Administration or something is wrong with the Postal Service and that is what Congress ought to fix rather than go through and doing this retail one at a time.

Session limits are something that was brought up by Senator Dole, which I also support, because I think it would give a real focus to the session. One of the problems in Congress now is there is not a sense of finality because you meet year-round and you go



from one session to another and, really, from one Congress to the next. It is too easy for you to let issues slip, to bring them up next year. And so it may be better to compress your sessions into 6 months or 8 months, and even if you could get a 2- or 3-month recess, at least there would be a sense you are done and a deadline to measure yourself against.

I think congressional coverage is fairly critical. I understand some of the separation of powers arguments, but it is sort of a corrosive thing. I think there is a fairly simple way to take care of the separation of powers question and that is, right now, under House and Senate rules, when employees and Members are subpoenaed, you have to present those subpoenas to the body. There is an opportunity then and there to examine whether there is a separation of powers issue or whether this is something routine that you can let go.

So I am not sure that is as big an issue as it is sometimes made out to be. You ought to take a good look at legislative shortcuts. For instance, committee reports and so on like that, because I think those are the cause of a lot of mischief in terms of micromanagement and so on like that. And you should think about whether these things are fundamentally statutory or nonstatutory, and if they are not statutory, they should be at least under suspicion.

There may be valid reasons for them, but I don't think there is enough division or definition right now between what you do in a committee report and what you do in legislation. And the legislative process brings the President into it and imposes an order that really doesn't exist now.

It also tells use something about the budget process, because fundamentally the budget process is a nonlegislative process; that is, it doesn't end up in law, it ends up in a congressional budget resolution. If you are interested, for instance, in forcing an annual or bi-annual negotiation between the President and Congress, I can think of no better way to do it than to force the President to sign the budget resolution. Because then he is into the process. He has to buy in.

You now have a constitutional process that says you have to come to some sort of agreement and you can give up these ad hoc sorts of things that are going on now, and I think it would be a fine way, really an essential way, to look at reforming the budget process if you want to go that way.

Just a quick note on House Floor procedure because I have been interested—you see I worked for Trent Lott for a long time—and I have been interested in seeing the Democrats and the Republicans talking past each other between efficiency and fairness in terms of access to the Floor. It is not a problem in the Senate because you have nongermane amendments, and if you really want to vote, you can get one.

The simple way to solve it is you get the Rules Committee out of the business of picking and choosing among germane amendments and you say, instead, we are going to limit by time or numbers of amendments and let the Minority have six amendments or four amendments or 10 amendments or some reasonable number that they can pick and choose amongst and that would lower a lot of the vitriol in terms of what is a fair rule and what is not.



The one specific proposal I would like to sort of float out for you is in the scheduling area. My critique, I guess, of giving additional scheduling powers to the Leadership is really leadership is not created by new rules. Leaders make themselves, and a lot of times leaders make their own rulings, but you will not create a new class of leader by reforming the House rules in the absence of what is going on in the House and Senate.

I think, instead, you may want to consider reviving an initial debate on legislation on first reading under a one hour rule when the legislation is first introduced. Have a debate right then, then make an order after that debate, certain motions, for instance, to refer to the committee, perhaps to kill it right then, and allow yourself to instruct the committee to take some actions.

For instance, report back to the Floor in 3 months or 12 months or to amend the bill in such a way it will not cost more than a certain amount, and this gives everybody a voice and a stake in the agenda-setting process. The Leadership, obviously, has a tool, then, that they can shape the agenda because they will be the ones offering the motions and suggesting what is appropriate, but everybody's involved and you have a vote. Also it would cut down on the amount of legislation that is introduced. Because when you throw out a lot of bills and resolutions and you have to go out and defend the proposition to your colleagues, this is something worth spending their time on, a lot of that would just go away.

I hope it is an interesting idea. It may be the kind of thing you want to think about.

Finally, one suggestion for the committee, and that is you think about adopting a noninterference rule during the remainder of our 6 months because I can see some problems emerging. You have already decided to stay out of campaign finance for what I think are valid reasons. That is moving along and it may or may not be you, but it is going to happen.

But a couple of weeks ago you had a big debate on congressional coverage. You had the House Majority leader coming down on the Floor saying, we should not do this because we have this committee, and he is throwing it into your lap. And that creates a problem because it raises expectations, it raises decisions about the committee as a burying ground for some of these pressures and so on like that, and it probably puts on your plate some things that don't need to be there.

For instance, certainly the select committees, there seems to be a mood in the House to do something about that, and it wouldn't be a useful thing for the committee or for the Congress to say let's keep them alive for a year so; you guys can kill them at that time. So you may want to issue a statement that says, please, go ahead, vote on these proposals, but don't tell everybody we are going to solve these problems when there is a real issue.

Just in conclusion, as I said, some of the things that I have said may seem a little like Congress bark or criticism but I want to assure you my interest, as in really all these other speakers and witnesses, is in fundamentally strengthening the Congress, but I think you can only do that by focusing on your central missions, on legislation, and by stopping doing some of the other things you are involved in now.

[The statement of Mr. Mason is printed in the Appendix.]

Chairman BOREN. Thank you very much. I want to, in order to let all the members of the committee who have come today have an opportunity to ask questions, I want to begin with those that have not had a chance to ask questions.

You may direct your questions to any individual member of the panel or all three of the panel, if you want them all to comment on a particular question, and we will begin with Ms. Holmes-Norton, if you have any questions.

Ms. NORTON. Thank you, Senator Boren.

I would like to first say how useful I have found the testimony of all three of you. Its detail was especially helpful.

Parenthetically, to Mr. Mason, I want to say on the question of casework, on eliminating all the caseworkers, I note the absolutism of your language that Congressmen should get out of the casework business. You would give that responsibility to an ombudsman. I note that I believe an ombudsman would have to hire a staff of equal proportions, and that one would create, contrary to what I understand to be your normal beliefs, a huge bureaucracy in the Federal Government and in each agency. We do it with a tiny number of the most overworked people in the Congress.

I am going to report you to the paperwork reduction committee, especially considering your view that what we should do is report all our correspondence and phone calls and put it in the Congressional Record. Thank you very much.

I do think that the ethics which have been recently clarified on the matter of communications to the executive branch probably are very useful and eliminated most of that problem, and I think in a government where people see themselves already as dealing essentially with huge bureaucrats, the notion of dealing with somebody in the District who may be somebody like you and will try to find that check, comports with the kind of small government that I think maybe even you would like us to get back to. I say that in some jest, but also because I can understand where that suggestion came from.

And I would like to say to Mr. Mann and Mr. Ornstein that I appreciate that you dealt with the full schedule of our concerns, recognizing, of course, and we are getting to some of the others in our own schedule somewhat later, I nevertheless would like to ask a question about one of those.

By the way, you bring up in your paper, Congress and the Courts, which may not be on our schedule of concerns, but it is something that has intrigued me for some time, so much so that I am considering teaching a small research seminar next year at Georgetown because lawyers are both chiefly responsible for these ambiguities and responsible for going to court to argue there is no ambiguity at all. I found that an intriguing part of your paper.

You say, in your testimony, that one concern, the ethics concern, may, to quote you, do as much to improve the public perception of Congress as a constructive revision of the ethics process as anything else. And though we have been dealing in these first meetings with essentially intramural concerns, concerns of enormous importance, because they go to the efficiency of the Congress, the fact is the average citizen doesn't have the slightest idea of how

many committees or subcommittees or what ties us up in knots and how much of these problems are a part of gridlock. And that, of course, goes to your notion about helping the public to understand more about the Congress.

I particularly like your notion of an independent office of congressional compliance. I think that you have recognized and dealt with the separation of powers point. It is a real problem. You cannot have a Senator being held before the, called before the commission I used to head, the Equal Employment Opportunity Commission, before a GS-12, who sits him down and sits somebody else down and says which of you did what. And I think you dealt with that quite well.

On the ethics point, where you would have no fixed committee but a pool and panels, I think you do move us ahead. You move us ahead also by recognizing that judges would tie us up in their own discipline, which is different from ours, albeit with some of the same procedures and concerns.

You, however, seem also to recommend no permanent staff. You have no permanent members, but you also seem to have no permanent staff and you have us hiring or borrowing staff. Indeed, I think you get us what some have tried to ask the Congress to do for a long time, a kind of independent counsel in the Congress that way, because you have these different staff people each time.

My question is, do you see no need for a core staff, a kind of institutional memory, if you are going to have all these changing, floating panels? Is there no need for some kind of core that passes on to these panels, an understanding, a legislative history, a judicial history of some kind? How would you handle or could the staff question be solved simply in the way you seem to indicate?

Mr. ORNSTEIN. That is probably a reflection of poor drafting on our part in the language. You need a core staff and should have a core ethics staff. And, indeed, we leave open the possibility of keeping ethics committees in place in the institution that would be the repositories of the judgments made by the outside panels and then sent recommendations on.

Ms. NORTON. I thought that would go to the entire Congress.

Mr. ORNSTEIN. Our druthers would be to have, to remove those committees from the Congress and have the recommendations go right from the outside panels.

Ms. NORTON. What would the panel do? What would the congressional panel between the Congress and the—

Mr. ORNSTEIN. It would receive those recommendations, maybe consider them and debate them at the smaller level before sending them on.

Ms. NORTON. Could they change them?

Mr. ORNSTEIN. I would think you would not want to have them change them, but no reason not to have a core staff. The only point is, you may have a core staff that—the ethics committees now deal with an enormous amount on a day-to-day basis of a staff member saying can I take this trip, do this action.

You have to have people who take all the precedence and compile precedents at the base level. But when you get a specific case coming up of an individual you may then have the need for an out-



side group to hire others who can handle some of the investigations who have a specific expertise, that is all.

Mr. MANN. The institutional memory and expertise is essential, and we use here language that the ad hoc panel would forward its recommendations to the internal Ethics Committee and then it would, if necessary, forward this to the House or Senate Floors. In some cases, the matter would be resolved once the ad hoc committee reported in and the committee resolved it and issued a report.

But given the ad hoc nature of the ethics panels, you have to have some continuing body within the institution to retain the expertise at the staff level as well as the broader perspective on the series of cases that would come before it.

Mr. ORNSTEIN. Could I make one comment about the courts since you raised it and we didn't have time to deal with it here? We think it is extraordinarily important—and it gets back to one of the points that Mr. Mason made—you look back at why laws were much shorter 25, 30 years ago and why they have grown in length. Of course when the Interstate Highway Act was drawn up in 1956, it wasn't a page and a half.

And then we just simply had a system that got put into place. We had all kinds of pork barrel decisions made. We had all kinds of interaction. We had all kinds of States that had to be dealt with. How was that dealt with?

Two things that happened, of course: One thing that happened is that back then we had many more laws. You had them done at an individual level on a much smaller scale. I am not sure it is that much better if you have each piece of the highway system done through an individual act.

It goes back to, if you recall in Mr. Smith Goes to Washington, they were talking about a bill that dealt with this very small piece of a river. That is how things were done back in the 30s and 40s. We have moved more toward omnibus legislating, presumably more for efficiency.

What also happened was the "triangle," so-called, the informal relationships with a wink and a nod between Congress; outside groups and agencies were much stronger then.

Part of it, to put the best face on it, was that you had much more of a relationship of trust between Congress writing a law and delegating to an executive agency that it thought would act in good faith in carrying out the actions of Congress than it does now.

Part of the belief was that the courts would act in a relatively good faith way. What has happened in recent years is, first, not only 12 consecutive years of divided government but making that the norm in the postwar period has created a real atmosphere of distrust between Congress and the executives. So we have to write more detail in. And that has been made, in my judgment, far worse by a series of Supreme Court decisions that, in effect, give enormous leeway to executive agencies to define congressional intent however they wish.

What is going to happen, you are going to write more details into law. What the courts are doing is forcing you to micromanage more through the process of writing lengthier statutes.

At the same time, with this level of distrust between agencies and executive branch officials and Congress, the desire to find ways



to signal intent have grown. And, indeed, we write more detail into laws there, too. So we address both of those issues here with ways of better and more sharply defining congressional intent and hope that you can work with agencies.

Now there is an opportunity where you don't have divided government. Well maybe you can do some things that should have been done that will serve the purpose when, once again, we do have divided government. But, also, in dealing with the courts where you have an increasing number of justices, who want to define legislative intent, basically, so it fits their own ideas of how it ought to be done and taking it in the most narrow fashion possible. It is a very important priority in our judgment.

Representative NORTON. Thank you.

Senator Boren.

Chairman BOREN. That is a very interesting point, because there are some justices that say you shouldn't look at legislative intent at all, and that really pushes Congress into writing every single detail of what is legislative intent in the statute in a very unhealthy way.

Mr. MANN. This gets less attention than any other topic under your jurisdiction, but in some ways it may be the most important.

Chairman BOREN. Very interesting point.

Let me turn now to Senator Reid who is here with us today.

Senator REID. Thank you, Chairman Nichols.

Mr. Chairman, Members of the panel, I think it is important to get on the record the fact that from the year 1984 to now, the executive branch of government has increased some 180,000 people. This is not necessarily full-time equivalents but people that work for the executive branch of government.

During that same period of time, the judicial branch has increased significantly even though, in numbers, not a great deal. It is up 11,000 people, which in 1984 it was 17,000. Now it is up almost to 28,000. The legislative branch, though, has gone up 18 people—not percent, but people—during that same period of time.

The Senate, from 1981 until now, has really—has literally dropped in numbers of people that work in the Senate now. So I recognize as being Chairman of the legislative branch Appropriations Committee how much we need to do, and we have made certain commitments to cut spending in the legislative branch and will continue to do that. But the two branches of government separate and apart from the legislative branch of government have gone up significantly more in numbers of people than the legislative branch.

Mr. MANN. Mr. Senator, the first task in legislating, in doing your work, is to get the facts straight; and one of the tasks is to help the public understand the realities so that they are in a better position to make a judgment about what ought to be done.

One of the great myths about the Congress is that its staffs had continued to grow over a period of time in a linear fashion. What happened? Staffs are big. They grew between the early 1960s and the mid to late 1970s; and long about 1977 or 1978 they stopped growing, maybe partly due to the efforts of you and your predecessors on the legislative branch Appropriations Committee.

For whatever reason, the growth that was fueled, let me say, by an effort to democratize power within the institution and to better cope with differences with the executive, that growth stopped. And since then, Congress has been at a steady state.

Now, that is important to know and to get on the record. That doesn't mean congressional staffs should not be reduced, and it doesn't mean they shouldn't be increased.

Senator REID. And it doesn't mean they shouldn't be more efficient. And I understand that.

The executive branch—I tell people this at home, and I think, frankly, they think I have taken leave of my senses—3 million people in the executive branch of government; 3 million.

The judicial branch of government, now I believe there are Federal trial judges of less than 1,000 in this country; I think that is about right. But yet they have increased their staff now to over 28,000 people. They have gone up significantly during the last few years.

Again, the legislative branch, which has a total of 38,000 people, includes the Library of Congress and all that.

I am, Mr. Ornstein—

Mr. MASON. Senator, if I could just make one quick point on that. I agree that the size hasn't grown a whole lot in recent years, and in fact shouldn't be cut for budgetary reasons. But I think that may make the problem a little bit more complex rather than less so. Because I don't think that cutting 10 percent or cutting 5 percent or something like that is the right answer in this context. If you want to do that for symbolic reasons—

Senator REID. You have made your point very clear in your testimony that across the board cuts would be foolish, even though that is probably what we are going to do. And that is really too bad, because there are certain areas that need to be cut for efficiency a lot more than others.

In that, I have the responsibility and Dale Bumpers today told me how glad he was that he wasn't still Chairman of the legislative branch appropriation.

In your testimony and in the writings that you, Mr. Ornstein, and Mr. Mann have done, you talk about recommending that there be an elimination of special and select committees, except for intelligence. And, you know, we have a tremendous problem, political in nature, because these select committees, Indian Affairs, Veterans—Veterans is not a select committee. But you have—in some of your writings, you have recommended that the select committees—you know, there we have select committees, we have Aging and Indian Affairs, which have special constituency that make it very difficult for us.

And then you have other committees, Small Business and Veterans which have special constituency. I have already talked to Senator Pryor, my good friend, about the Aging Committee, of which I am a member. And I think we do some good things there. But if you look at the congressional directory, it lists 37 employees for the Aging Committee.

Now, how are we going to—how are we going to solve these problems with this constituency that they have, Veterans, Small Business, Indian Affairs, Aging?

Mr. ORNSTEIN. It is a very difficult problem that we have been through before with lashes on our backs still to learn from. There is a general principle here I think, Senator, which is that these institutions should not have committees that are focused around individual constituency groups. Committees should be focused around important subject matters.

And, second principle: Committees that are set up to be temporary should be temporary.

And a third principle: Basically, you create a committee because you have, in the short-term, an important issue that has just arisen and it doesn't fit what you have done in your jurisdictions and there is ample reason.

You don't want to abolish the idea of select committees entirely, but the goal should be to try and move those issue areas as quickly as humanly possible into important committees that have the substantive jurisdiction and reduce the numbers as much as you can and, particularly, to do it in a fashion that creates more balance in the workload of the committees that exist.

In the House, just to take one example, as they move towards possibly abolishing the Committee on Narcotics and Drug Control, we have got two committees in the House—the Judiciary Committee, the Foreign Affairs Committee—that can't find enough Members to serve on them because they don't have a breadth of jurisdiction that is attractive enough; so we have vacancies.

Senator REID. The select committee, people waiting in line to get on that.

Mr. ORNSTEIN. If you moved that jurisdiction and framed it around one of those two committees where it could logically go, you add an important piece of priority legislation. Make them focus on it where it ought to be focused and add to the attractiveness.

Now, we would also consider doing away with many of the joint committees. And, indeed, as you know, Senator Reid, we exaggerate what the legislative branch appropriations is, because as you yourself noted, so much that is included there has nothing to do with the functions of Congress, whether it is the Botanical Gardens, the Library of Congress, the Nation's Library, that is not the workings of Congress; two-thirds of the General Accounting Office.

Senator REID. Printing.

Mr. ORNSTEIN. Printing. One of the things that you ought to consider doing is, first of all, going right at the question of the printing function.

Our recommendation would be that you abolish the Joint Committee on Printing, create a kind of operation so that you can manage the printing for Congress and have that done by the Congress and take the printing for the executive branch which doesn't belong in the Congress and give it to an executive agency and, indeed, move towards radically reforming the printing process as the private sector now does it because of the tremendous changes that have taken place in technology. That is one thing.

A second thing you might do is to take the Joint Tax Committee, instead of having it work as a committee that has Members and that requires time on the part of Members, turn it into the functional equivalent of a Congressional Budget Office. Make it a con-

gressional tax office that has, in effect, a staff that can operate that way.

Senator REID. Why couldn't you combine it with CBO?

Mr. ORNSTEIN. There may be reasons for not doing that, but I can't say it wouldn't be a good idea.

We would also recommend that you consider dealing with the intelligence issue. Many have suggested creating a single Intelligence Committee. We are against that. We think having the widest range of Members having some experience in dealing with intelligence gets people more sensitive to the important needs that exist out there. But what you might consider is creating a joint intelligence staff that also is equivalent to the joint tax staff. A small group of core, real professionals that would take away a lot of the criticism that there is so many intelligence staff people with clear answers out there that it creates some real problems in efforts.

There are ways of dealing with those issues and starting with the select committees and those that have constituency interest and not broad subject matter interest and the joint committees that really probably are not necessary is a good start.

Senator REID. I will pick up the next round, Mr. Chairman.

Chairman BOREN. Thank you very much.

Senator Lugar?

Senator LUGAR. Thank you. Let me touch upon two things that at least the three of you have said about our relationships with our constituents.

One was accounted by Mr. Mason about casework, and Ms. Holmes-Norton has dealt with that. My own view coincides with hers in large part that most of our constituents that have that fear of the Federal Government in ever resolving their problems. I wish that was not the case, but they do come to us and to our staffs in the State, really, for help in trying to get to the labyrinth. I think that that is an appropriate function.

I suppose the dilemma comes if we try to promote mail, if we try to hype the amount of this service as opposed to helping people who need help who come to us or, for example, in the recent telephone calls that have been so reported, we did not generate calls dealing with the Attorney General problem of the president. But it was important that constituents knew they could call us. A lot has been said about the interaction of government and the importance of our responses. In fact, our phone systems work; we heard them, and we responded to them. So I am not certain how we all come out on that, but I just want to make a comment. I think so long as this is not self-promotional in generating business, this is important to devote some staff resources to try and work through the labyrinth.

The more intriguing problem that gets presented again is what I always call sort of the Howard Baker dilemma. Howard used to give speeches about going home for 6 months and being a country lawyer again. In my own instance, prior to this calling, I was manufacturing food machinery and manufacturing a farm. The farm I can still do with the ethics laws that make family farmers immune to almost everything, if it really is a family farm, a small partnership, and you can manage the crops you want to do and fill out the forms and what have you, which is useful to me on my work on the



Agriculture Committee. But when you get into manufacturing machinery, that becomes more difficult. Still may be a family business, but after all sales now in millions of dollars, potential conflicts of interest begin to intrude.

Furthermore, the whole push of common cause for years has been to say that those of us who serve legislatively ought to be antiseptic with regard to almost any other calling income, what have you. And I understand that. Certain age-old argument about conflicts of interest. No speeches, no articles for a fee, and all the rest of this, because of special interests that might influence it.

The problem I suppose is that if we are going to go that route, why wouldn't we be here resolved to work full time for 12 months? Simply because if that is to be our function literally, immune and divorced from all regular callings of life, this is what we ought to be doing, legislating.

On the other hand, our constituents really don't like this idea any better than many of us do. They would say far better that some of you were farmers or even lawyers, given all the potential for conflict of interest there, or manufacturers, or someone who understood what we have got to do, all the forms we have to fill out.

In fact, doing all the forms with regard to my farm gives me a very keen idea—which I think maybe only one or two other Members of the committee have—as to what a farmer has to go through in America today with the rules that we have promulgated in our committee.

It is conceivable, I might have a conflict of interest. I produce corn and soybeans, and maybe what I do on the committee affects the price of that. Although there were 9 billion bushels of corn in this country last year, so it would be minimal. But we have come to such a point that the suspicion of Members of Congress self-dealing or, if we get into the coin of the realm of this world, is so bad that it seems our constituents would want us to understand how tough it is in these things.

You have spoken to this a little bit but not very much, and maybe we can't. Maybe we accept the fact that the issue was over a long time ago. We are full-time legislators with no other sources of income and, therefore, very little touch with these people for fear of being charged with being in conflict.

But do you have any comment on reform in this area?

Mr. MANN. Senator Lugar, you brought up two very important matters and matters that oftentimes—most times don't get discussed in the depth and seriousness with which you have raised them.

I think casework is absolutely essential as a part of the job of Members of Congress. It is the opportunity for average citizens to get a hearing with someone in government having an incentive to listen to them, and elections help provide that incentive for you to listen to them. So that is a good thing.

The bad thing is that some of your colleagues are so good at this that they give up a lot of business, and they are out there trying to find problems that people are having and, in effect, using it as an electoral strategy that is quite divorced from the real problems that people have. So it is a question of abuse.

So how do you find the balance? We think it is important to continue to have the first point of contact with the congressional office, but we believe it is possible to realize some efficiencies in the process, moving more in the direction that David was talking about, in pursuit of secondary referral but keeping the initial point of contact with the Member of Congress. That reach out and touch someone possibility is important to maintain.

On the second issue, which is such an important one, you know there still are legislatures in the world in which it is considered sort of a badge of distinction to have conflicts of interest because it means you know something and, therefore, are in a position to make judgments about matters that come before you. I think we have gone way beyond that. I don't think we can ever go back to that world. It is not possible to have citizen legislators, given the agenda of government and given the expectations of people about conflict of interest.

We simply have to accept the fact that there is a professionalism in politics as there is in virtually every other sphere of life. And the trick is to make the best of it, to figure out ways to keep you all in touch with ordinary Americans, going back home when you can and thinking of formats that bring you in contact with people that give you some sense of what they feel. Casework actually serves a useful purpose in that respect, because you get a sense of the problems that individual Americans are encountering with their government. That is why I would not do away with it. But don't fight it; accept it.

Senator, you may be a farmer, but you are also a great legislator; and it is the latter that we have to focus on in this joint committee and make it possible for you to do your job better here.

Mr. ORNSTEIN. Let me add something to the second point that you made, Senator, because I think it has a broader element to it and then another narrower one. We are now going through waves of ethics reform with regard to the executive branch and the Congress, and it is very useful to do it in response to a public unhappiness with all institutions in the society and those who are running them.

We got to be careful we don't go too far. And I look now, for example, at the controversy over an appointment as an Assistant Secretary of Energy to somebody who will deal with the nuclear waste clean up. And in effect, we are moving to disqualify anybody who has had any connection with the industry because they have a conflict built in. What kind of person—who are we going to be left with who can handle that sort of thing if we start, basically, disqualifying everybody? We have simply a universe of academics who have not worked in the industry and who have a theoretical view only or somebody who is at an age of retirement and——

Senator DOMENICI. Or congressional staffers.

Mr. ORNSTEIN. We are moving too far in that direction. We have clearly done it with Congress as well.

I remember when then Senator Muskie stood up on the Floor when he discussed the issue of honorarium and eloquently talked about what happens when people don't have their own independence of wealth come to this institution. And if you make that fine distinction between earned income and unearned income, you are

going to drive people like the Muskie's out of the institution. And I think we may have gone too far in that regard, even though there were salutary steps taken; and now we have gone even further.

I think it is a good thing for Members of Congress to travel, to get around the country, to get around the world to see things, to get a real life picture of what is going on. I go out frequently and lecture and often in places where there are groups meeting where Members of Congress will come. And it is a very useful exchange. If you can't get an honorarium, what is the incentive to come? Somebody is going to pay you? You are busy people.

Is it going to serve the interests of the country ultimately if you will not go out and meet with the groups there in a setting where you are not in a kind of formal place in your office just across from people? I don't think it serves those interests, but now we are at a point where you cannot accept an airplane ticket or anything else. The rest of the world doesn't behave that way. The people that write about that and condemn you, blithely accept invitations and go out and do those things. And we have to find a better way to strike a balance here in terms of what you can do.

With regard to the full-time business, remember, if you go to a 6-month legislature, you are going to have a 12-month presidency. And what is going to happen during the 6 months when you are away? Now, wherever you are in the world, governments operate full time. If Congress moved back to a 6-month period there would be no Congress that meant anything in this society.

Senator LUGAR. Thank you very much.

Chairman BOREN. Mr. Dreier?

Representative DREIER. Thank you very much, Mr. Chairman.

Let me first say to you, Norman, that based on the number of my colleagues I saw at the Bob Hope Desert Classic last week, I can assure you many were still traveling around to events that are held around the country. And I should say also that I hope that my friend Mr. Mason effectively responded to the pejorative remarks made by one of my colleagues concerning our alma mater.

I apologize for the fact that I had to leave, Mr. Chairman; and I had to leave because I went, guess where, the Rules Committee. And I don't know if you all have spent much time talking about the Rules Committee, but I would like to take a few minutes to refer to pages, I think 18 and 19 of your study. And I would like to talk about the first chapter in the ruling class, the book that was edited by Mr. Mason, and talk about the frustration that so many of us in the minority have felt about that rules process.

We just—when I was called out we were scheduled to have votes on the family planning measure, and we had seven amendments—or eight amendments—that were proposed. And the majority prevented us from having the opportunity to offer all but one of those amendments, and it would seem to me that would have been a perfect opportunity for an open rule because there were so few amendments.

The sad thing is that the Rules Committee gets very little attention. I think Senator Lugar or one other Senator earlier was talking about the fact that the Rules Committee streamlines things in the House juxtaposed to the acts in the Senate. And we all know that it does streamline things. But clearly, with the tremendous in-



crease in the number of restrictive rules that we have seen over the past several years, it has really prevented those of us on the minority from having the opportunity to have—to have the chance to represent our 600,000 constituents as effectively as those in the majority do.

In the 95th Congress, we saw that 15 percent of the rules were restrictive. In the last Congress, the 102d Congress, 66 percent of the rules were restrictive. And I am sad to say that in the 103d Congress, so far 100 percent of the rules have restricted the opportunities for Members to be able to simply have their ideas heard on the Floor of Congress.

Now, as a member of that committee, I am one who clearly recognizes that when one gets to a very complex tax measure or some other item, we do need to have some kinds of restrictions. With 435 Members in the House, it is obvious that we can't have open rules on all occasions because we could have Members stand up, offer the same amendment, different people offer the same amendment; and it does become overwhelming. So I think that the framers were correct in establishing a Rules Committee.

And I recognize, while I am very frustrated with the two-to-one, plus one ratio against those of us in the minority, I recognize that the Rules Committee has, in fact, become an arm of the speaker-ship. But it seems to me that if we are sincerely trying to end gridlock, if we are trying to create an opportunity for Members of both parties to represent their constituents, I believe that we do need to take some kind of action that would bring about a diminution of those tremendous numbers of restricted rules.

Now all of you have talked about the need to do it. And my question to you is, how are we going to be able to effectively do that; and how could this committee respond?

Mr. MASON. Well, we have made a fairly specific proposal on just that point. In fact, while you were out, I talked about, it is not all that complex a problem to solve because the balance between efficiency and the rights of the minority can be settled by time, by numbers of amendments.

And so if you told the Rules Committee that they can limit the number of amendments to some reasonable number—and one is probably never enough—or they can limit the amount of time and then allow the minority to decide what germane amendments they want to offer, I think you solve the problem. And, fundamentally, what happens is the amendments are limited not really because of time but because the majority party doesn't want to deal with those issues.

There was a great incident in the crime bill a couple of years ago where a dozen or so amendments were allowed on the Floor for votes, but they didn't want to allow a vote on a death penalty amendment. It is a big issue, an important issue. And for some reason or another a lot of lesser issues were allowed but not that.

The easy way to do it would be to establish a principle in House rules that essentially gave the Rules Committee some preexisting rules that they could adopt, no more than 10 amendments or whatever; and then require a super majority vote if they wanted to do anything different.



Representative DREIER. Would you advocate an equal number of amendments for Members of the minority and the majority? I mean each of us having a half dozen amendments?

Mr. MASON. What I would say is set up three or four rules of that sort. So for instance one rule would be a simple open rule. Another rule might well be a set number of amendments.

Representative DREIER. To take care of the open rule, we don't have any problem.

Mr. MASON. A third might be requiring amendments to be pre-printed because there is a desire for that sometimes. But three or four rules of that sort that give the committee some options in dealing with legislation and say, is this a bill where we really—we want to be on and off the Floor in one morning, and so we are going to allow 10 amendments, five and five, and that is it. That might be one option. You might want to allow other options. But lay out four or five options of that sort that give them some flexibility. They could adopt any one of those four or five options by a simple majority vote.

Then if they wanted to do something different, they wanted to restrict the rules more or come up with a new rule, require them to get a two-thirds vote; and then that still gives you the opportunity in extraordinary circumstances to do something different but also sets out some fundamental fairness.

Representative DREIER. Okay.

Tom?

Mr. MANN. Mr. Dreier, I am reluctant to make any recommendation that would make the House look more like the Senate, especially when it comes to Floor procedures.

As you know, it is an institution with serious troubles on the Floor. And a principle of open rules, open debate on all matters could well take us back to the period in the 1970s when many of your Republican colleagues were behind some of the moves to begin to bring order to the Floor.

Representative DREIER. Clearly I haven't advocated that.

Mr. MANN. No. I understand. What started as a desire on the part of a number of Members, Democrats and Republicans, to bring some order and predictability to the Floor at a time when every individual member was taking everything there has now turned into a sharp partisan conflict that I think has brought great disrepute to the House. And it is a problem that has to be addressed now.

As you know in our recommendations, our initial report in this testimony, we have a specific suggestion regarding the motion to recommit. We feel strongly about that, and would urge this committee to take it up. We think it is a very important first step.

I think to try to move beyond that and to begin—

Senator REID. Could you explain that? Explain what you want done?

Mr. MANN. In effect, it guarantees the Minority Leader the right to offer a motion to recommit. Now it is possible for the Rules Committee to, in effect, take that away. It also—

Representative DREIER. It has been a tradition that the minority has for the most part had the recommittal motion. But in recent

years we have been denied it, and that is what has been happening.

Mr. MANN. That is right. And we think that is not right and that ought to be an ironclad commitment. We also have a provision in which there is a possibility of a 24-hour layover to sort of prepare for a debate on it. But that is a modest—that is a modest amendment.

We think in the institution of the House—which is a majoritarian institution, unlike the Senate—it is impossible or at least it is unwise to try to write rules restricting the ability of the Rules Committee. I think you have to do it by overturning the rule on the Floor and building support for it.

But Mr. Dreier, what has happened is that we have a War of the Roses now. The majority party believes that you don't really want to legislate; you guys in the minority want to embarrass the majority; and that is what this is all about. This is all part of the increasing partisanship that reflects, as you know, the fact that there are fewer conservative Democrats and fewer moderate liberal Republicans in the country as a whole, stronger, more unified parties resisting one another in a period of divided government which we had for 12 years. That explains so much of this. What we need is to figure out how to begin to de-escalate the War of the Roses.

See if we can't gradually build down——

Representative DREIER. How do we do that?

Mr. MANN. I think the majority party has the onus of responsibility to take the first step. They have to begin to be more open about amendments on the Floor and acknowledging the value to the institution of allowing legitimate differences to be aired on the Floor.

So I think they start with that. The minority responds in kind. And rather than playing a confrontational strategy of trying to embarrass, they use it to try to legislate. That is successful. And you begin to build on that over time.

Representative DREIER. Obviously my perspective is that of a minority member. But I will tell you that there are more than a few very balanced, thoughtful amendments, which we as Republicans are not allowed to offer.

Mr. MANN. I agree.

Representative DREIER. So I appreciate the fact that you have acknowledged that the first step should be taken by the majority. And I will admit that there have been more than a couple of occasions where Members of the minority have been so frustrated at the fact that they have been denied the opportunity to offer amendments on the House Floor that they have said, by God, let's have a previous question battle; and we are going to make this the litmus test vote on this issue to try and embarrass them so that they will at least provide us with a semblance of openness when we consider these measures. So that is really what has brought this about in recent years.

Mr. MANN. But it is more than that. I mean acknowledge that there is a frustration with 40 years of minority status for the Republican party and a new breed of Member coming to the body determined to play a much more confrontational strategy, less sort of

legislative cooperation, more political battles going on, that fuels this process of restrictive rules.

What I am hoping now is that the majority will have more confidence with unified government, with the President in the White House, they win a few battles, begin to back down from this, the minority responds in kind and we begin to make some progress.

Representative DREIER. I think that there is a good potential for that. And I think that there would be less confrontation if there were an opportunity for us to just offer a few of our amendments. Norm?

Mr. ORNSTEIN. I would just add a couple of broad points. What Tom said reflects very much our thinking. As you know, we have gone out of our way in both reports to address this issue. We feel very strongly about the corrosiveness of this relationship between majority and minority.

And clearly, the majority will sometimes use the idea of recklessness on the part of the minority as a good excuse to avoid bringing up amendments that are very useful ones, and not just bringing up amendments, frankly bringing minority Members into the debate and discuss which occur. We have frequently addressed Members of the majority in collections of one or large numbers urging them to move away from that, too.

Representative DREIER. What kind of response have you gotten?

Mr. ORNSTEIN. Realistically, you are not going to be able to do this by imposing a set of rules except by changing the rule with regard to the motion to recommit.

But one of the other broader points that we need to make here is when you say, how do you go about doing this, a large part of the thrust of both of our reports is to strengthen party leaders in both of the institutions and in both parties.

When we talk about a motion to recommit with instructions—which in effect Senator Reid would be giving the minority an alternative on the Floor to what is going on—we want to have it done by the Minority Leader or his designee, not by anybody else, so that the leader is strengthened.

If leaders are strong enough to work together and cut deals and deliver on those deals, we believe you will have less partisanship; and that is a good part of the thrust.

Representative DREIER. What has been the response, though, of the majority to these recommendations which you have made?

Mr. ORNSTEIN. There is a lot of enthusiasm of many of them, but there is still this very strong attitude. There is this attitude of suspicion about the minority, and we are still in that mode of vicious circle.

When Tom said the War of the Roses, you know, it was a literal interpretation. The book and the movie of a couple that has got so caught up in their own internal conflict that any little thing that was done, it became a focal point on destroying the other guy. That is where we are heading in the House unless we bring about a change. It has got to start with the majority. And we are pushing hard to get them to take that first step. But there is a responsibility on the part of the minority, too, to respond in kind.

Representative DREIER. I acknowledge that. All three of you have worked very hard for a number of years on this whole issue of reform.

Are you hopeful about our prospects about being able to pass a major package in both Houses of Congress this year?

Mr. ORNSTEIN. I believe, first of all, that it has got to be a bipartisan and bicameral approach, that it is not going to work unless you have agreement on a wide range of issues across both parties; that if you did come up with a significant series of recommendations and bring them as a package, the pressure on the institution to pass them will be very, very strong.

You are going to have to pay some attention to your political strategy. You are also going to have to make sure that you don't get caught up with the kind of partisanship on the committee that we have been talking about, that you look to the broader issue, look to strengthening the Congress. If you do move in that direction, you have a very good chance.

Mr. MASON. If you come out with a modified report, I think it will get a big head of steam. How do you take on some of these specific interests? And if you can build a package that says reform and that genuinely delivers on it, then a lot of the subsidiary interests and the individual interests of Members and committees are just going to go away beneath the political pressure.

Mr. MANN. Many of your colleagues were surprised by the reaction on the House Floor over the select committees. These are unusual times. We are in a period of plebiscitary democracy. It is scary sometimes. But a package of changes that are known by thoughtful people inside the institution to be likely to strengthen it and identified on the outside as reform has an excellent chance of passage this year.

Representative DREIER. Since you, Mr. Ornstein, mentioned the issue of political strategy, how would you recommend that I deal with those committee Chairmen who have been grabbing me by the collar and telling me not to mess things?

Mr. ORNSTEIN. I would smile enigmatically at them.

Mr. MANN. Good point.

Mr. ORNSTEIN. We all know that the pressure from these kinds of issues cut closer to the bone than anything else. And I have heard, as no doubt you have, Tom Foley speak eloquently about the experience with the Bolling Committee. There are people even to this day 20 years later who remember every little fine point there. You are going to take—it is an awesome responsibility that you have.

One of the things that we mention in our report in this testimony, too, that I would emphasize again, committee reform is essential to what you do; but it is not the only thing. And you have got to be very careful that you don't get so caught up in making every jurisdictional change that you create a coalition that will bring the whole thing down. Do some of the things that can make an enormous difference in the committee system.

You can cut the numbers of committees and subcommittees. You can really move to enforce the assignment limits. You can make some jurisdictional changes that are absolutely necessary to fit the 21st Century. But I wouldn't make, as the core of what I do in this committee, totally turning the committee system upside down.



I would go a long ways without recognizing that you have got so many other things here—whether it is the courts or the staff issue or the relationship between the parties and the executive branch that are all an integral part of this—that I would try and make sure—you are going to have to take out some Chairmen and that is just fine. We have taken out some Chairmen in the House select committees, and there are going to be bitter resentments afterwards. But the institution will be better for it in the end.

Representative DREIER. I hope that all three of you will continue to work closely with us over the coming months, and I may send a couple of people to see you.

Thank you very much, Mr. Chairman.

Chairman BOREN. Senator Domenici.

Senator DOMENICI. Do you prefer to go?

Chairman BOREN. No. Go ahead.

Senator DOMENICI. Well, let me say to all three of you, I am very appreciative of what you have done and apologetic for not having read more of what you have said in preparation for this. But I promise you I will.

I am a victim of the system. I don't know that I should have taken this job on with everything else I have to do, so we will do our very best.

Frankly, I am not sure at what the American people seem to be mad at us about has anything to do with what we are trying to fix. That doesn't mean we ought not try to fix it anyway. You know, there is lot of frustration among our people because things are not going as well for them as they would like in many areas. Children's jobs seems to be one. The future of our economy. But every day our people have more pressure. And I, frankly, am wondering whether we are not over promising with reference to we are going to satisfy many of those anxieties that they have. My own hunch is that we are overstating the case for government in terms of the kinds of problems that are out there.

Having said that, I think you have given us some tremendous testimony today. And I would like to—there are a number of small issues, and I want to leave them alone and perhaps ask you personally or get with you. But a couple of areas concern me greatly, and I think we should talk about it a little bit.

I have tried to put my finger on what is wrong with each Senator's office as I see it through my own eyes and watching. Senator Byrd, while I may not agreeing with all of his recommendations, he best described the problem when he said our attention is fractured.

You see, the reason Howard Baker is clamoring for a part-time citizens legislature is because of that, it will diminish our fractured attention because we won't be here to be fractured. We won't be here to put our fingers on so many things and join so many efforts that our attention on legislating and proper oversight is just a little tiny bit of our jobs any more.

In the opening session of this I said, Norm, you and I go back to the time when you were very young; you weren't even married yet; you weren't hooked on to this Italian woman that I have been trying to meet to show her how to cook Italian food. But one of my little twin daughters told me when I was about a 4-year veteran of this place, when I was interrupting her Tuesday morning TV at

8:30 in the morning—which I never was around very much for that—but that day I stayed home, and she looked back at me and said, “Daddy, you is no king; you is just a senator.” Well, the problem is we are kings; we are not just Senators. We are kings.

Senator REID. I didn’t know that.

Senator DOMENICI. Yes. Well, we are. We have a better domain than kings. And our domain is to create a little individual office that is ours. And we can do all these glorious things out of it including give all kinds of speeches, even if it is not for remuneration, that have very little to do with what we ought to get done this week. And, I confess, we join more groups to get things done; and we don’t do them right.

So I very much would hope that we could look at how do we lessen this fractured attention span with these changes so that there is more attention to our job?

In fact, I think it is difficult up here to get the attention of Senators as to what we are doing. I mean we pass bills that most Senators—on technical issues, on science issues and the like—and they don’t know they got passed. And I am not squealing on anybody. I am just giving you an example.

The most laden department of our government with science and technology is the Department of Energy. If you are to ask Senators, what department of your government has more science and more technology and more physicists and already on-the-job doing things, I don’t think one out of 50 would pick the Department of Energy. And you know, that is a pretty big ticket item. So while our attention is fractured, what we get attention—what we pay attention to is also very less than it ought to be.

Now, all of this is human nature. It is a lot of things. But I am kind of concerned that by failing to say we can do more in less time and not succumb immediately to being 12-month-a-year legislators. I am figuring we are moving more in the direction of fracturing our time, of building our own little domains—and they become very big domains—instead of what we really ought to be doing.

And I will tell you right off, you can tell me that it is debate on the Floor that would do it, I don’t buy that for a minute, that that will focus more on it. You can tell me it is go home to town hall meetings more, I don’t believe that will do it. Frankly, those are all structured anymore. If they are not, they are going to be before too long. You can tell me casework is necessary to get input. I will tell you we ought to put some prohibition on generating casework, because I will tell you, there is as much casework generated openly and intentionally. You run around in a mobile truck trying to tell people you want to take care of them. Well, why wouldn’t they all come? Put a little sign up, “We will take you’re blood pressure while you are here,” you get everybody to come. Then you get their names, addresses, and say, you are well; nothing wrong with your blood pressure. And then you got them on the mail. And who knows, it may be your brother in 18 months that will clearly vote for you. That kind of thing is clearly going on, and I don’t blame just House Members for it. So how do we get a little more attention on what we are doing and a little less continual fracturing of what we are up here for?

Mr. ORNSTEIN. I will take the first crack at that, I guess. If the corrosive partisanship in the House is an enormous problem, in the Senate, especially, it is the individualization of the institution, which has always been there but which has gone overwhelmingly in a direction that is destructive.

Now the institution caters so much to the whims of every individual that, frankly, you have 100 Senators, almost none of whom care about the Senate because they have their own domains. And we have got to do a whole series of things to move in a different direction.

The Floor procedures have to change. And one of the things that has to change, in our judgment, that is right at the top of the list, is this crazy practice of holds where any individual Senator can block action on a nomination indefinitely or on a bill indefinitely, which is not in the rules. It is simply there because the culture has developed that you bend over backwards. That has got to start at the top, but you can't just expect a leader to take action if all of the individual Members don't want it to happen, except they just pay lip service to it. So somehow you have got to work on the culture of your colleagues to put the good of the collectivity a little higher in the pantheon than it has been.

Along with that, there are structural changes that you can make that will nudge the individual Members towards a little bit more of a focus. I am not sanguine about how well those will work out with changing the culture because again going back to where we were with the Stevenson Committee, we passed a series of important changes in committee assignments and numbers. We didn't get what we wanted. We fell short. But we cut the number of subcommittees in the Senate by a third, and you have been reasonably disciplined on that score. It was our major accomplishments, and we cut the number of assignments.

But immediately everybody violated them, and nobody said a word about it. And if one is going to do it, everybody else wants to do it. So you have to work at the cultural level. Cut the committees; cut the assignments; get a meaningful debate on the Floor so that people can actually focus some of their attention and energies on the broader issues.

We take issue a little bit with Dave Mason. We have seen debate on bills. There is general debate on bills. It has become meaningless and perfunctory. And bills, when you get a debate on them, generally focus on narrow issues that come up in those bills. You have got to try and get at least some framework for debating the big issues that join the country. If you can tie them to things like the budget plan moving forward or the health plan moving forward, all to the better. But you need real debate where people can focus on that where you have to spend some attention thinking about the bigger issues.

But that is no panacea, you are absolutely right. And unless you change the culture and the attitudes at the individual level and you can play a role there by jolting the institution with your reform proposals, you are going to continue to move in a fragmented direction.

Mr. MANN. Senator Domenici, you have eloquently raised the two most important issues before your committee in the institution.

One was that the contrast between a democratic critique of Congress of what is wrong versus the real needs of the institution here. There is supposed to be a body of generalists who face voters on a regular basis and come together to deliberate as a body. And as you point out, you don't do it much. You don't see your colleagues much in a setting in which you actually have genuine give and take, and in which you have the capacity to change your mind. The body has become so close, it is so open, so permeable, there is no insulation, no layers that you—it is impossible to do your work. You are running around. You are raising money. You are going to your 14 committee assignments trying to get to the Floor, give a speech a staff member wrote. It is a very frustrating situation. And I think the only way to cope with it is to talk openly and honestly about the problem.

We cater too much to individual Members here. This is the last plantation still, right? It is deference to the Member and to the Senator and still some remnants of patronage around.

We need to change the culture as Norman said, the mentality. We need to talk about the collective needs of the institution. We have to figure out a way to get you all spending less time raising money, less time flitting around to multiple committee assignments and some time talking to one another about the country's problems.

Senator REID. Senator Domenici, could I just interject one thing here?

Senator DOMENICI. Of course.

Senator REID. Sorry to do that. But, Mr. Mason, in your written statement that I read, I think you made a very good point when you talked about making sure we debate real issues. And you give an example of the Gulf War. I think a lot of times that, because we leave so much to administrative agencies, we don't debate real issues.

Is that in keeping with anything that Senator Domenici is talking about?

Mr. MASON. Absolutely. You know, I really said two things. One, you ought to focus on legislation, which is really what you are talking about. But I think in order to do that, something has got to give. And there are a lot of things that you do now that are everyday parts of your job. And the reaction to people, for instance, to casework, no, we have to keep that. And to a lot of these other things, I think one way to get at putting more attention on the special functions that I agree about is deciding what you can live without. And if you go through an exercise of cutting committees, cutting staff, cutting functions, I think—for instance, investigations are something else that could be cut dramatically, because a lot of the investigations are sort of quasi criminal things, they are for publicity and so on, like that. There are obviously instances in which Congress needs to do that, but they are committees—you are familiar with them—that are basically just in the full-time investigatory business; and they don't need to be.

So you go through a list of a half a dozen things like that and sharply reduce them. And I think you will end up with a lot more time to do the things that are important.



Senator DOMENICI. Mr. Chairman, might I just wrap up with an observation; and I would like to talk with the three of you, and I will find time.

Frankly, I am pleased that you were saying that we don't necessarily have to do away with Appropriations and put that in authorizing. I don't think we could—that will be a war of the type you have described. It won't be worth winning the battle.

There are some who say if you do away with the Budget Committee, it will solve all the problems. You know, in all these respects, we have learned over the last 10 or 15 years some important things about what committees do and what they don't do, based upon the substantive law that creates them or gives them their energy.

And frankly, Norm, you know a lot about the budget process. One of the reasons it really doesn't work and hasn't worked like everybody wants it to work, I should say, is because Congress chose not to give it very much authority. As a matter of fact, you relish our retaining the reconciliation process.

Well, you know the history of that. That is a congressional evolution. Some say we have done it all wrong, that reconciliation should have only been directed at appropriations at the end of a year. We were the first to put it in at the front of a year. You recall that. That is 1981 to 1984. Even our reconciliation, its purpose in the Senate is to minimize debate on what reconcilers bring out of their committee, because obviously, you—the germaneness rule applies in spades. It is a tremendous limitation on what you can substitute for on it. That is why it is looked at with such enthusiasm by those who want to report out their tax bill and don't want the United States Senate exercising its prerogative to debate the issue. Because when that bill comes out in our body, we don't need a Rules Committee. The reconciliation rules are a Rules Committee. You can't change it very much.

I don't think that is what you are bragging about, unless—or telling us we should keep. Unless you are saying that you think those committees producing that reconciled bill—and we have had a bunch of them, about three omnibus reconciliation acts, changed more laws than you can ever imagine in a very short period—but those committees don't produce what the Budget Committee had in mind, but they still get their reconciled bills and amendments.

So I think if we are going to work off a Budget Committee—and we probably ought to—we ought to decide what its real role is. If we are going to use reconciliation, we have to decide what it really means. When you say reconcile 40 billion in tax increases and 286 billion in budget reductions over the next 4 years and you plug it into committees, what does it really mean? You all know what it has meant to this point.

We have a hell of an argument on everybody putting in their dogs and cats that they couldn't get passed any other way; but they have got a majority on the committee, and they put it in there. It doesn't cost anything, or it costs very little. And they can come down and say it doesn't affect the deficit, so what is wrong with it? So we have to look at the reality of what it was given versus the reality of what we want to do when we look at what is its future.

Having said that, I wonder why you are not for a 2-year appropriation bills as compared with appropriating every year—and that

is the end of my question—other than to tell you, one reason I have heard is that it is the primary oversight vehicle of the United States Congress, that without appropriations, subcommittee hearings, we wouldn't have much oversight.

Now, I am not one to normally be quite so precise about things; but I will tell you, I have been on the committee of appropriations for a while—not nearly as long as my seniority would have permitted me because we had a Republican rule you couldn't be on the Budget Committee and appropriations. Did you know that? It was from Dewey Bartlett. It was called the Bartlett Rule.

So for about 6 or 8 years, I had to choose whether to get off Budget to go on Appropriations, and I was Chairman for part of that time. So I decided to stay on the Budget Committee. But I don't believe the oversight of the appropriators—and I would like your observations—is really the kind of oversight over what is going on in government that we really need. I think it is far less than adequate, and it is doing the best it can.

So I thought we ought to give more oversight, which is why I thought we ought to have 2-year budgets, 2-year appropriations, leaving 1 year for everything else.

It is a Bellman suggestion, and I throw it out. Everything good comes from Oklahoma. So do you understand what I said? I said an awful lot.

Mr. ORNSTEIN. Your point about reconciliation and the power originally given to the Budget Committee is very well taken. And I think we have to think it through.

And you have to think it through in terms of any change you make in this process with what the unintended consequences would be and where we would end up with a lot of history to inform us.

I am a little skeptical simply about what benefit will come from a 2-year budget and appropriations process. What concerns me is if you look at the budget process generally, now, we make a budget based on projections that are 21 months in advance. Now, forgetting the mischief that comes in with jiggering the assumptions—and let's assume that all the assumptions are in good faith—it is such an imprecise process that if you are off by a half a percent of your projection on the unemployment rate or the inflation rate, it has an enormous budgetary consequence. And to the degree, which you manipulate those to achieve the desired political outcome, you see what happens.

The difficulty that I have is I think if we move to a 2-year budget cycle where we are making projections 33 months in advance, we are going to be imprecise to begin with; and then we are going to add in another element. And the degree to which we will spend our time tinkering in the second year trying to make our projections meet the realities is going to soak up most of that time anyhow.

So I am just skeptical that it is going to have the desired effect. And I think the same thing will happen on the Appropriations Committee. I have no doubt that the kind of oversight now done on Appropriations, by and large, is much less productive than what used to be the case when appropriators had that as their major function. It was the only significant committee assignment they had, and they would sit down with agencies and really go through where they have the annual hearings what they did and how they

did it. The ethic and the culture were different then to. I would love to get back to that.

I am just not sure. I am very skeptical that a 2-year process is going to give us more of that. And it may be that forcing them to sit down with the agencies each year at least gives you an opportunity to ask those questions. That is why—I mean I am just skeptical. If I could be convinced that it would work better, I would have no hesitation about endorsing it enthusiastically.

Senator DOMENICI. Okay.

Mr. MASON. I am for it.

Senator DOMENICI. Mr. Chairman, let me make this observation: If this committee is trying to prepare for the future and make sure that something doesn't happen in this Congress that brings down the wrath of the people and that they end up saying, why don't you do something about it in Congress, I will tell you, in addition to all the good things you have recommended, we have to find a way to be able to come out of this saying, we have set in motion a way that Congress is going to have to do oversight work.

I will tell you there is a bomb waiting to erupt in 20 or 30 major American programs that have no oversight, where there is big government guarantees waiting around. It is not an S&L around the corner, everyone; but there are mini S&Ls. And I don't know whose looking at them. So what I am saying is we will do all this reform, and two of them will bust in about 4 years and there will be all this anguish about what is wrong with Congress. And then somebody will say, well, if we just did some reform, we would fix Congress up. But the truth of the matter is, it is not politically—not politically sexy to do oversight, unless it is oversight that you know in advance is going to get a whole bunch of people for doing the wrong things. Just plain old oversight on major American functions of government is something we really ought to push this committee to put in place in some way, where we maximize it or we come out of it, Mr. Chairman, saying we encouraged it; we urged it. I don't know how.

Mr. ORNSTEIN. That is a good point. But this is a second point. This is also part of the budget process. A lot of the bombs you are talking about are items that are off budget that we are not accounting for the obligations of this government.

David Stockman's great failure was that he was unable to bring all of that on where we had something that was out in the open about this, and it is a bomb waiting to go off.

Senator DOMENICI. Most of it is on budget now, though.

Chairman BOREN. I am going to conclude and then ask Chairman Hamilton to conclude the entire hearing. But let me thank all three of you for the suggestions you have given us. I certainly want to pursue this ethics idea you had, and I think it is a very interesting one. And it seemed to me it could be put together with the idea of still having the standing ethics committees with a permanent staff for the purpose of giving ongoing advice and for the purpose of really compiling the precedents and also periodically examining the principles and the rules in the ethics areas under which we are operating.

If you get them out of the business of fact finding and guilt finding and recommendations of punishment, keep the Ethics Commit-



tee which would then not be a burdensome assignment for Members. I don't think you could leave it with only staff to compile the precedents and the rules. You would have to have Members overseeing that. But give them that sort of, if you want to call it, almost a common-law function along with the rule-making function and then put the fact finding and the guilt finding and the recommendations of punishment out to an outside panel drawn from a pool so that you wouldn't burden even certain individual former Members or others with a full-time job after they have left public service.

I think that is an excellent idea, and it seems to me it could be combined in a way that would solve the other problems that have been raised.

I want to go back to the staff designation questions. As I understood what you were talking about—and I think perhaps I have been somewhat misunderstood—I do think it is important that we reduce the number of staff and the number of committees. I think that we have reached a point of diminishing returns. Certainly if you didn't have adequate staff resources, you couldn't get your job done. You certainly could not have an effective balance in terms of overseeing what the executive branch is doing. You also need an adequate number of committees.

But I think we have gone beyond the point of diminishing returns. Now we are creating make work, and we are micromanaging in areas that distract us and fragment us in a way that we can't pay attention to the big problems. I have often given the example of eight of us were trying to work out a compromise on the civil rights legislation—for example, four from each party in the Senate, we were trying to do that—it took us 3 weeks to find one hour in which we thought we could get all eight of us in the room to deliberate. It turned out we never got all eight of us in the same room, even in that one hour that we finally selected. Two or three were there at the beginning; a different two or three were there in the middle; and at the end, just as we have found ourselves today in the course of this hearing in a very similar situation—because of the press of other business, because we are rushing off to do so many other things and we are simply trying to do too many.

So I wouldn't do it across the board. I wouldn't just say every committee is going to cut back 20 percent or 30 percent or whatever or that we go about it in an artificial way. I think you have to evaluate it committee by committee. And, hopefully, if we did away with some unnecessary subcommittees, that is unnecessary staff, staff on an unnecessary committee. So you begin to peel away the unnecessary staff by doing away with unnecessary committees, and I would guess that the area which we could achieve the first order of reductions would be in committees and subcommittees in terms of staff reductions.

I gather you were talking about ending the practice of having individual staff members on committee staffs that were answerable to and hired by Members; is that what you were saying?

Mr. ORNSTEIN. Yes.

Mr. MANN. Basically, the argument is that if you think of the need to balance the individual needs, ambitions, prerogatives in the institution that we need to tip a little toward the latter. And we



think associate staff more serve individual interests than they serve the legislative process.

Chairman BOREN. I would agree with you, because what has happened—I can give you the example of the Intelligence Committee, which I no longer chair, but I had that experience—Every one of the 15 Members at that time—now the committee has been enlarged—every single one of them had their own staff member. They hired them. They set their salary and so on. It was only by persuasion that I get them to do the work that needed to be done by the core staff of experts for the committee.

Senator REID. Mr. Chairman, but, conversely, if, for example, a person is on a committee and is Chairman of a subcommittee, you would see nothing wrong with having a person on the committee that is responsible to the Chairman's subcommittee? Otherwise you never get anything done.

Mr. MANN. Oh, no. There has to be committee staff available. The real question is should every member of every committee have his or her own staff person.

Chairman BOREN. And we are moving toward that. And I understand also you have to protect the rights of the minority so that in most committees—we didn't in the Intelligence Committee; we had a—I used to call it a unique American staff, which I found worked pretty well, if we could get rid of some of our partisanship.

But in some areas, obviously, there is enough difference of philosophical perspective that there needs to be a majority and minority staff to make sure that everyone is protected.

But if you do away with the unnecessary committees and leave only those that are necessary, then certainly you would have staff that are responsible to the Ranking Member and Chairman of the subcommittee. But I understood you to say that is one of the ways in which we could begin to get some institutional coherence and also reduce the unnecessary staffing level at the same time?

Mr. MANN. Yes. That is right, Senator. Put it in perspective. There are 1,154 Senate committee staffers, and 2,246 House committee staffers. That is 3,400 total. When the public thinks of those committee staffs, I am sure tens of thousands come into their minds. So it is not a massive number.

Chairman BOREN. Not a huge number.

Mr. MANN. But within that, some savings can be realized. But they should be focused on consolidations of the committees and strengthening of the Senate.

Chairman BOREN. Well, frankly, I agree with what you said. It is not a matter that should be budget driven. It is a matter of allowing us to function more effectively. My argument is I think we have reached the point—let's set money aside, not that it isn't important; but we have reached the point where the additional staff people, after a certain level, have made it more difficult for us to do our jobs because they are out generating the individual agendas of individual Members of the committee in a way that really is thwarting and fragmenting the committee's work as opposed to causing it to act in a coherent way.

But I understand what you are saying. I want to go back to this and ask you how you think we can proceed and also ask for your

input into this. I understand you are saying we shouldn't develop a litmus test in terms of our success of our efforts.

I also understand what you are saying in terms of, let's not—I think you are really saying, let us not cause an image of the perfect to prevent us from doing what is possible and what is good.

I think we have an opportunity here, a very unusual opportunity, to accomplish a lot that would help the institution. And I understand what you are saying in terms of the nuclear war that would result if we tried to completely change the authorizing and appropriating process. I think there is no doubt about that, that we could even engender such controversy that we would get nothing done and we would not get a lot of things done that we can get done that would be very beneficial to the functioning of the institution and to the American people.

So I understand what you are saying about practicality. But I do fundamentally believe—and I don't know how we began to handle this politically—I do fundamentally believe that, one, we go back—you used the word distracted; Senator Byrd has talked about being distracted, fragmented, unable to focus on the main problems; and we have become less of a player. The President can't deal with a fragmented institution. He can sit down with certain reasonable Members of the Congress who have some authority to speak for us, both parties, because of their committee responsibilities and leadership responsibilities. But he can't deal with 299 subcommittees and committees in a fragmented fashion and really give Congress any voice in policy. It causes him to, in essence, try to go along without Congress when you have to deal with that kind of fragmentation.

Nor can any of us, when we have this kind of responsibility—and I have been looking at the list sitting here, we range from, I think, a low of 6 or 7 committees each in the Senate up to as high as 22 or 23 committees each as Members of the Senate. It is not at all unusual to have far more than 12, 16, or 18. And there is no way we can function that way. I simply don't believe that there is any way that we can really get the job done or that we can really make the institution work, even if we do some other things.

I just think it becomes so central to ending what we have talked about, of getting control of our own schedule, enabling us to focus on the big problems, nailing us to not have our energies frittered away on things that are frivolous and unimportant, to begin to focus on the things that are important for our next century. I am not at all sure that we are going to be able to compete with the world in the next century. And we are frittering away our time and our energies.

It seems to me we have to find a way to bring some coherence to this. I don't know how in the world we can deal with it. I suppose you can pass a rule and say no one can serve on four committees or subcommittees, and it would take the vote of both parties to grant a waiver. We could put some stiff rules in here so we wouldn't backtrack. That would help. I think we have to find a way, picking and choosing carefully, to reduce the number of committees and subcommittees substantially and to bring about a more coherent jurisdiction.

I know the problem that you are talking about. We all know the history of the Bolling Committee. We know exactly how reform ef-

forts have floundered in the past on the very ticklish question of committee numbers and jurisdictions because we are—let's face it, we are invading the empires, the power structure of this institution. We are talking about taking power away from people. But it is another reason why we don't ever see each other; we can't get together in groups to deliberate, even informally, because we have this fragmentation.

How do you think that we can deal with this in a way that is politically possible? And are you willing to help us, the three of you, in looking at committee jurisdictions and sizes, helping us identify—I will just tell you right now, I chair two subcommittees that I think are important. One is on agricultural trade, and one is on tax policy. Both important issues. If I could get the number of committees and subcommittees dramatically reduced in the Congress, I would be happy to give up both of my subcommittee chairmanships.

Senator REID. Give up both yours, and I will keep all mine.

Chairman BOREN. Only if my good friend will give up his as well. But I think we need to do that. I would be willing to do that. And the full committees—you see we take on too many things, and we can't attend—we can't attend 97 hearings in 1 week.

And so, therefore, if we had more of these things handled in the full committee—let's just take the Agriculture Committee, every Democrat on the Agriculture Committee chairs a subcommittee, virtually everyone. Almost everyone on the Finance Committee does.

Now, that means they are all having hearings, and they are all taking up issues without any order of priority of importance. Now, if, principally, the full Finance Committee—and I realize there are exceptions to this. There are some areas that are so important. But we would then set some priority in the overall committee. And I would far rather have hearings on three major subjects, let's say in agriculture or finance, in a 2- or 3-month period, one a month, and really focus on it than to have 47 in which you are running in and out of the room.

How do we do that, politically?

I understand what you are saying. You are saying, don't put all your eggs in that basket and don't think you haven't done some good if you can't, really, in some way, dramatically bring down the number of committees and subcommittees and the number of assignments for Members.

I just honestly don't know how we begin to get rid of this destruction and fragmentation and inefficiency in Congress if we don't look at that.

Mr. MASON. Let me offer one suggestion. That is in the House, we have had some success in simply setting a number of subcommittees—and it only shaved a few subcommittees; and I know it caused dislocation in the Foreign Affairs Committee. And I think you got a waiver on one of them. And there were some others.

But in some ways, it is going to be easier to do that and then tell the committees to go back and decide, you know, and set a number instead of six or five subcommittees, then you might want to push it down to three or four and let the committees decide where the jurisdiction lies.



Chairman BOREN. You see, it may well be that one standing committee doesn't need any subcommittees; and another one may need four.

Would it not make more sense to, say, 25 subcommittees, and the House, let the committee chairmen get together and decide, based upon the rules of each committee or whatever it is, argue it out through some forum as to when committees get subcommittees.

Mr. MASON. But some way of agreeing on a number and then working out the details later will buy you out of some of the problems, because then you haven't targeted that committee Chairman, that subcommittee Chairman; you get everybody to buy in and vote for the rule that says no more than 50 subcommittees. And then you work out the details later.

Mr. MANN. Senator, I think your approach, as you have outlined it here, makes a good deal of sense. And certainly I feel comfortable with it and agree with the objectives, which are to reduce the number and the demands on Members' time so that people can talk to one another. I think that is right.

I think our only point here is that it is not just the politics; it is the substance of the issue too. I mean I don't think the body would be well off having Members all contained in, say, a very small number of committees. That is, you have to allow some Members the opportunities to be entrepreneurs. That is how you will uncover some of the huge problems that Senator Domenici of Chicago was talking about. We don't want to restrict you. We want to have Members of Congress with numerous opportunities to be legislatively creative. That means we have got to be somewhere between where the legislative Reorganization Act of 1946 was and where we are today.

Chairman BOREN. Exactly.

Mr. MANN. And so the object is to move down. I think you can do it. You begin in the manner we suggested, consolidating, eliminating some individual committees and with them go their subcommittees. And then you begin the pressure on committees to reduce their subcommittees.

At the same time you are going to move some jurisdictions around, you lower the number of assignments. And at the end of that process, if you combine it with strict policies regarding waivers, you will find you have accomplished a great deal.

Chairman BOREN. Well, does this group come out and list—for example, do we attempt to do that? I am talking about from a political point of view. Let's say—now I have said we ought to go down to 50 committees and subcommittees, and that may be a bit extreme. But I certainly think we ought to be closer to 50 than to 299 committees and subcommittees. Operate the Intelligence Committee with no subcommittees, and keep any individual member who had a good idea from having it considered; we talked about it together, if it was a great idea, something that ought to be looked at, it got on the full committee agenda and we did it.

And if I wasn't willing to chair the hearing, he or she chaired the hearing. So you operated it; you didn't have to have a subcommittee or a lot of bureaucracy; you just did that. The full committee could handle it.



That is not true in every case. There are massive amounts of money or whatever it is you have to oversee. But do we set a number and say, is it—Mr. Mason has suggested, for example, of some form, whether it is per committee or on total number and say, we have to get down to that; there will be no more than that?

Do we spell out, here are the names of the committees that will continue to exist and here are the names of the committees and subcommittees that won't continue to exist out of this group?

You see, I think we kind—after all is said and done, we have 299—how many select committees are there? Five and two. And we come out of here, we say we have brought about a great reform that is going to end the fragmentation and distraction of our Members; we have done away with 7 out of 299 committees that happen to be select committees. I have got to say we haven't done anything.

Mr. ORNSTEIN. It is a start. It is a start.

Senator REID. Many of the select committees have subcommittees, so you—

Chairman BOREN. Well, you might get rid of 15 or 20.

Mr. ORNSTEIN. That is only a first step out of many.

Let's look a little bit at history and the ways in which you can do this. What we would argue against your doing is the kind of massive jurisdictional reform where, in effect, you go in and say we are going to take 12 major subjects out of the Ways and Means and all of that and take that out. That is what, basically, killed the Bolling Committee.

There are some areas, as Tom suggested in our initial comments, where you have got to look at consolidating because these are areas that are of extraordinarily important now that are just ignored. And every 20 years or so you got to go back and look at this.

But, frankly, it is not even worth doing this massive rejurisdictional business because you cannot hermetically seal issues off. You can't take the health area and make it a separate committee without doing violence to the tax area and to the veterans area and a number of others. So you got to build in other mechanisms like the ad hoc process.

But you can eliminate subcommittees, and you ought to be specific about those and consolidate them with others, as we did on the Stevenson Committee. The core of what we did on the Stevenson Committee, even though we did a lot of jurisdictional realignment, we pulled a lot of environmental jurisdictions together in what was the Public Works Committee to create another. We merged others into government operations to create governmental affairs, and it is a far better committee now with those functions being handled in a better fashion than existed before.

We took energy jurisdiction and pulled it together; transportation jurisdiction and pulled it together; science, pulled them into commerce and it works more effectively now, and so on. But what we did to start with was to put limits on the number of committee and subcommittee assignments and the number of subcommittees in committees.

When you do that effectively, you then have significant reductions. And the fact is we went from roughly 150 subcommittees in the Senate to 100 at that point. And it was real reductions.

What ended up happening was the committee assignment limitations are the ones that have been violated far more than the subcommittee. Once you violate the committee, you then violate the subcommittee. There is no doubt that if you limit Senators to two committees, you are going to get a lot of committees eliminated, and you are going to have to consolidate jurisdictions.

What you have to do is build in the kind of mechanism that makes it much more difficult to waive those, and that changes the culture.

The fact is, we have 12 Members on the Stevenson Committee who voted for these tough assignment. Limits and a couple of weeks after it was all over, I think all 12 violated the assignment limits. I don't condemn them because they joined everybody else in the institution.

Chairman BOREN. Once the dam breaks, it breaks everywhere.

Mr. ORNSTEIN. But that ought to be your focal point.

And what we have just done in the House, which was to put stricter assignment limits and eliminated 16 subcommittees. Now, 16 is not meaningless, it is not the whole shot. But in the end, committees have now realigned their jurisdictions or subcommittees.

If you put limits on the number, caps on the number, you are still going to have committees like Intelligence that could have subcommittees if they wanted to, deciding they don't need them. And that is perfectly fine and, indeed, desirable. But that is what your focus has to be.

Senator REID. Mr. Chairman, your point that you would be willing to give up your subcommittees, I would too. I think your point is well taken. But I think you asked a rhetorical question, and none of the panel answered. Should we do this? I think there is nobody else to do it. I think we have to make some of these hard choices, otherwise we are just punting and somebody else will do it.

Chairman BOREN. Let me just simplify, I use this as an illustration, not as to say this should be where we should come down.

But you are saying if we had, let's say in the Senate, a rule that no Senator could serve on more than two standing committees, which would be easy; and then we could divide them into Group A and B and let them meet on every other day; and no Senator could serve on more than two subcommittees—say one subcommittee of each one of these two committees—so if I were on finance and agriculture, I could serve on those two standing committees, and I could serve on at least one subcommittee on each one of those committees. Again your subcommittees, you wouldn't have any conflict of scheduling.

Senator REID. I would only have to give up 18.

Chairman BOREN. Then we could go back and we could say, for example—and obviously we are not going to have a lot of—if we really held the numbers down in terms of the assignments you could receive—and I am not wedded to two and two or four or whatever it is; I use it as an illustration. You could then go back and say, now we are going to have, let's say, 20 standing committees in each House and they can't have more than two subcommittees each or whatever that is. So you would—and allow the committees then to determine whether or not they want two or whether it is two or three, whatever it happens to be, but set a cap.

Have the committees then—the Agriculture Committee can do better than we could, for example, saying that if they are going to be allowed two subcommittees or three—what the jurisdictions will be; get together and decide, given our jurisdiction, here are the areas that need to be most in the subcategory for special attention.

Would this be a mechanism that would guide us toward—put us on a glide path toward some reasonable solution without getting us into the kinds of warfare that brought down the Bolling effort and others?

Mr. ORNSTEIN. I think you could make that work. You are going to have to figure this out, because it may well be that if you have two committees and two subcommittees, that with a chamber with only a hundred Members and with committees sized as they are, it just won't work with the numbers of majority and minority.

But I think a realistic number is to say that you could have no more than two standing committee assignments and no more than five additional assignments, which might break down into two subcommittees on each of the full standing committees and one joint or select committee. Or it might be that you give up a subcommittee to take on an additional subcommittee assignment on one of the joint or select committees.

Those are realistic numbers, it seems to me, you could hold them to.

Again, you want to play it out and see how that would work. But that is far more effective than deciding that you are going to gut the Finance Committee or do some of these other things.

In terms of economic international policy you have to bite these bullets where it is really important to do so.

Representative DREIER. Mr. Chairman, I think it is very important for me, in light of the fact that Mr. Reid and you have both agreed to give up your subcommittees that I say that I am going to give up my spot as the Ranking Republican Member of the Rules of the House Subcommittee.

And now we should turn to Mr. Hamilton, I guess.

Representative HAMILTON. I can't even get a word in.

Chairman BOREN. I think we are going to turn to Mr. Hamilton, not to put him on the spot, but to let Chairman Hamilton conclude our hearing today and ask his questions and make his comments.

We appreciate the patience of all the Members and the panel. This has been very useful because I think very soon we are going to get down to the point of not just talking about it but pulling something together and trying to set up a mechanism to make recommendations that will work, that have a chance of being accepted, that can be genuinely bipartisan so that we don't break down along those lines, and that we come out of here with tremendous momentum to get them accepted in both houses.

I think this the kind of thing—through a mechanism of how do you get where you want to go without faltering in ways earlier efforts have—is very important for us.

So I appreciate your comments, and I would welcome continued input from the three of you and suggestions to all of us to do that.

Chairman Hamilton?



Representative HAMILTON. Well, thank you, Senator Boren. And I want to express my appreciation to you for presiding all afternoon.

One of the rules we may want to consider is to limit the total amount of time witnesses can be at a table. And I suspect all three would endorse that rule. We are very grateful to you.

Mr. Mason, I want to say that you have come forward with very important testimony, and I welcome it. I have looked over your statement. We appreciate very much your participation. I am not going to ask any questions. You can relax for a few minutes here. Although, I am going to make a couple of requests.

I really wanted to speak principally to thank Mr. Mann and Mr. Ornstein for the extraordinary amount of effort they have put into this Renewing Congress project.

I think, since the latter part of last year, both of these gentlemen, who are highly skilled, of course, in their field, have just put tremendous hours in talking to people, in energizing the political science community and the country that has got interest in what we are doing here, in talking to Members of Congress, staffers and all the rest, and trying to distill that in what you have presented to us. We are very, very grateful to you. And I think your testimony is going to be extremely valuable to us.

Now, I think we face some risks in this committee. One risk is what you said. And that is that we come forward with proposals that, in fact, undermine the Congress. And that was an important overall observation that you made that I think is quite meaningful. I think there is a risk that the committee will do too little, that we will labor mightily and produce a mouse and we will be very strongly criticized.

And I also think there is a risk that you can do too much in the sense that you could put so much on the agenda we won't be able to get through it. So it is going to be hard to kind of hit a balance here for the committee to have meaningful reform but not overload the circuit. And the toughest decisions the Members of this committee are going to have to make are, what are the most important reforms, and can we get them through the respective houses with a majority vote. We are going to need your help there as we move along.

Now, specifically, I want to ask you, if you would, to tackle this problem that Senator Boren was talking about. You said in your statement, if I recall, that you are prepared to give us a plan for major realignment of committee jurisdictions. And I am going to ask you to do that. Not right now. You don't want to do it now, and I don't want to hear you right now. But I do want to hear you, and we will be having some hearings down the line here I think, will we not, on the question of committee jurisdiction. I think that is maybe March, April somewhere. But I, for one, am very much interested in that. And I would like to hear your thoughts about it.

And Mr. Mason, we would be glad to have you contribute to that as well.

Then one other area that you mentioned briefly in your testimony that I personally have an interest in and that is this business of—you mention that the committee system has to be more in line with post Cold War era and American foreign policy. And I think



that is what you were talking about on the American international economic proposals. But I am very interested in that proposal as well.

How do you shape these committees so that we can deal with the international challenges that we have?

While this afternoon has been a good illustration for me of the kind of scheduling problems we confront—and I apologize for being in and out frequently, but I wanted each of you to know how much I have appreciated what you have done and how important I think your recommendations are to the committee.

Senator REID. I apologize. And I will try to be as quick as possible. One of the things that we haven't talked about this afternoon is—Mr. Mason talks about it and you two gentlemen talk about it as did Ribicoff—and that is that there should be an agenda set in the House and the Senate with the minority having the opportunity to have some output—input I should say, as to what the agenda should be, even though they would probably lose every time. It would, at least, give them the opportunity to put forward to the American people their agenda.

Again, I agree with Chairman Hamilton, this is something we need not spend a lot of time on this afternoon. But I think it is a very important point that everyone here has made this afternoon and in your written testimony, but we haven't talked about it.

Mr. ORNSTEIN. Yes.

Senator REID. I also think that we on the Senate side need some mechanical way of this doing away with this hold thing. I think we would not be doing our job, Chairman Boren, if we did not address the hold. I have used it; I use it all the time. I have been in the Senate going on 7 years, and I have used the hold—my share. But I think that what we need to do there is maybe keep the hold, put a time limit on it. Holds automatically expire after 48 hours or some arbitrary period of time.

Do you think that would work?

Mr. MANN. Maybe. Also a little public disclosure is called for here.

Senator REID. As to who has the hold?

Mr. MANN. Yes.

Senator REID. The things I put holds on I could care less if the public knew about it. But the point is what it does, it just holds things up. I don't think it really matters. I think that maybe would help a little bit. You would at least know who to try to call to get the hold off.

But I think we need something more specific than that. I mean, frankly, the things I put holds on are things that are important to my State; and I, frankly, wish I had some way of being more notorious as to what holds I have. It might help me at home, but I don't think that does the trick. I think that we need to say that the hold that Reid put on is gone after a week or 2 days or 3 days or some arbitrary time.

Mr. ORNSTEIN. I think that is a great idea. If you had public disclosure of an individual putting on a hold and a time limit that was a reasonable one, you would have an enormous impact here. Now there is no incentive for anybody to avoid putting a hold on and to use it for leverage for whatever purpose they want.

Mr. MANN. Leaders are going to allow it because they are trying to negotiate unanimous consent agreements to make the Senate operate. So they have the incentive to cater to individual Senators.

Mr. ORNSTEIN. By the way, that fits with another of our recommendations that we never got to and at some point we will have to deal with the Floor of the Senate. We have a series of changes that we are trying to move away from at least routine business from the process where you have to work through agreements to re-create the committee of the whole so you can expedite business there. That would take away some of the leverage that could come from unanimous consent, too.

Representative DREIER. Mr. Chairman, if I could, you have just, of course, raised another—Senator Boren was asking about whether or not we have a hold in the House. And the closest thing that I think we have to it is the discharge petition. You talked about the question of openness, full disclosure.

Would you support the idea of having the names of those Members who sign the discharge petition be made public so Members who claim that they support a measure and then, in fact, don't sign the discharge petition from committee to the Floor and, in fact, be exposed, for lack of a better term?

Mr. MASON. That is a useful form that I have recommended.

Mr. ORNSTEIN. I would have to think about that one. You know, the hold is used by every individual member for all kinds of capricious reasons. The discharge petition is a different phenomenon. There are some issues that have enormous public appeal that Congress should not act on. It is part of the deliberative process.

I will give you one example for which I will get another wave of mail, as I have before, the dodge babies, which you have all heard of and I don't need to define for you. And I would rather not define it any further.

Senator REID. Would you list me as not being present?

Mr. ORNSTEIN. There are some issues where if you succumb to immediate public pressure, you are probably going to do something that is simply not wise in terms of public policy. Having a mechanism, a responsible mechanism, where you can respond to the will of the majority appropriately, but not inappropriately is something we got to think through.

I don't want to end up with a situation where you have all that more ability to react to a demagogic appeal or to something that has enormous public appeal but wouldn't be wise public policy.

Representative DREIER. Obviously the discharge petition is used when Members feel that they have no opportunity whatsoever to move it from committee because a committee Chairman will, in fact, file it up there.

And I think the point that we are making—Tom talks about this issue of disclosure and openness—it would seem to me to, at least, allow the names of those Members who have or have not signed the discharge petition to be made public.

I mean we face pressure every day here, Norman; and the fact that my name is not going to be on—we are going to get mail because you raised it not us here.

So I think that Members should be held accountable when they claim, as often is the case, that they are vigorously working to im-

plement legislation—a Balanced Budget Amendment to the Constitution, for example—and yet they fail to sign the discharge petition. And we are in violation of House rules if we say someone has failed to sign this petition when their name is not on it.

Mr. MANN. I simply hadn't thought about it. But I promise you we will and get back to you.

Representative DREIER. Good.

Senator REID. Mr. Chairman, one last question that I had.

I have talked to you, Mr. Ornstein, briefly about this, but I have introduced legislation that would require Congress to reauthorize matters every 10 years or they fail. The system we now have, there is no automatic review; and we have programs that have gone on for over a century and we never take a look at them.

Have you had a chance to think about that at all?

Mr. ORNSTEIN. You know, in our discussion I thought—it made me think about it. I think it is a very good idea. And what we ought to do is combine it, as I said to you, with the business of moving towards more multi-year authorizations, too.

If you have multi-year authorizations and you don't have a committee that has to go through this process every year—and it is often done in a perfunctory process as a consequence—you are striking a much more appropriate kind of balance. So I think it is a very good idea.

Chairman BOREN. Let us close on this optimistic note, again, of thanking you on one common theme. We have talked about common themes that have run through all the testimony of our witnesses so far.

And listening to this panel and listening to Senator Ribicoff, who has been a part of efforts in the past and has a great institutional memory about what can succeed and what can't, one thing that has gone through all the testimony is that we really do have a chance to do something, and that this committee, if it acts wisely, if it strikes the proper balance that Chairman Hamilton has just talked about, between doing what is possible and doing something significant, very significant and meaningful and yet not going so far that it undermines any possibility of getting anything passed—if we can strike that proper balance, then we really have the greatest opportunity that we have had in years to do something extremely meaningful for this institution and to make it function better and, therefore, to make better policies for the American people and better decisions for our country.

So that, to me, is a point of optimism; and it is going to take a lot of thinking on the part of all of us as to how to best strike that balance and put together those items that really should be priorities so that we can have a manageable number and get them done.

We thank you very much for the contribution that the three of you have made to this process. And as you have heard from Chairman Hamilton, we are not going to let you off the hook this easily. We are going to continue to ask your advice on the issues that we have been talking about today.

We will stand in recess.

[Whereupon, at 6:10 p.m., the subcommittee was adjourned.]





## APPENDIX

STATEMENT OF ABRAHAM RIBICOFF\*  
BEFORE THE JOINT COMMITTEE ON THE ORGANIZATION OF CONGRESS  
February 16, 1993

There is no shortage of ideas on how to reform Congress. Some might look at the numerous proposals before the Committee and conclude that reform is impossible. I disagree. I think that there is much that can be accomplished as you set yourself to the task of finding and building consensus. I firmly believe that real reform must begin with consensus.

I have had the opportunity to review the testimony of Senator Byrd, Senator Mitchell, and Senator Dole. Each has presented an excellent, carefully considered series of recommendations. To be sure, they differ in some respects. But there is also much on which they are in agreement. In such statements you will find the foundation for the consensus that is necessary to reform.

As you know, in 1982 Howard Baker and Bob Byrd asked former Senator Jim Pearson and me to undertake a study of the Senate's rules and make recommendations for reform. Parliamentarian Emeritus Floyd Riddick and the staff of the Senate Rules Committee provided important support for that effort, which resulted in a series of recommendations to the

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Senate in 1983. Your staff should have a copy of that report, which I commend to your attention.

In large measure, the problems that we identified in 1983 continue to plague the Congress today. Many of the reforms we proposed are echoed in the testimony that you have already received from current and former Members of Congress. In 1983, however, despite the foresight of Senators Byrd and Baker, Congressional reform was largely dismissed as an "inside-the-Beltway" issue of little concern to the public at large.

If that was true in 1983, it is no longer true today. Today, there is clear public interest in Congressional reform. "Gridlock" has become something of a household word for the inability of the Congress and the Executive Branch to reach agreement, and the image of Congress is at an all-time low. Indeed, many freshman Members of Congress won their elections on the pledge to reform Congress. Therefore, by contrast with the situation that prevailed ten years ago, there is now solid political support for the job you have undertaken. I am hopeful that you will succeed.

But you cannot succeed if the energies of this committee are dissipated in political turf battles. Even if the reformers succeed in such fights, they will only set their opponents to work on efforts to undermine reform through political gamesmanship, and the partisan bickering that is sure

to follow will only serve to lower the public's already low respect for the Congress. For this reason, I believe that it is important for the Committee to address itself to issues where it is possible to reach broad consensus between majority and minority interests. If the legitimate concerns of the minority are recognized, then obstructionists are likely to find no audience, and little tolerance for their demands.

There are three issues I want to review with you today.

#### CONGRESS NEEDS TO TAKE HOLD OF ITS SCHEDULE

There is a clear sense among the public -- and within Congress -- that Congress is out of control and that the legislative process approaches chaos. Members belong to too many committees -- and too many subcommittees. The committee assignments are hard to give up, particularly when they are accompanied by large staff allowances, but it is impossible for members to sit on ten or more committees and subcommittees and still give meaningful attention to the work that the committees need to do, let alone the numerous other tasks that fall to an elected official.

In addition, there are too many hearings, too many staff, too much time wasted, and too many days in which sessions drag on with no clear direction and no end in sight.

These are plain statements of fact. There is clear agreement on these problems. And I believe that is possible to achieve agreement on the solutions to these problems. Allow me to suggest some ideas.

(1) A legislative agenda should be established for the House and the Senate by the Congressional leadership, in consultation with the President, on the majority vote of each House. Such a proposal is discussed in our 1983 report, and I note that the idea has received favorable mention from others, including Senator Dole. The details vary, but it should be emphasized that the agenda --once established -- should be subject to change only by a premium vote.

There will likely be debate over the agenda. Members will differ on the importance to be assigned any given issue. But it is hard to understand why there should be objection to the idea of establishing an agenda, whatever the agenda might be.

If an agenda were established -- and followed -- it should be possible to avoid the late-night and Saturday sessions that wreak havoc with the personal lives of Members, and the end-of-session rush that marks virtually every Congress. An agenda that allows for careful consideration of legislation would also address the minority's legitimate desire not to be surprised by scheduling decisions -- and would avoid situations in which Members are asked to vote on complex and controversial



legislation with little or no advance notice. In addition, a published agenda for the consideration of bills would encourage timely and focused public debate on issues before the Congress.

Moreover, if an agenda were established -- and followed -- I firmly believe that there would be much less concern over many procedural reforms. For example, our 1983 report recommends an end to the practice of allowing individual Senators to place "holds" on bills, putting in place of this practice a screening procedure in which a Calendar Committee, made up of majority and minority members, could flag bills on which there is objection. Some "holds" are placed on bills purely as an obstructionist measure. But other "holds" are born out of the concern of individual members that an important bill will be brought up when they are ill-prepared to challenge it -- or when competing events will prevent them from being present during the debate or vote. With such protections in place, and an agenda firmly established, no Member could reasonably ask the leadership to block consideration of legislation otherwise cleared for action.

(2) There are probably too many committees and subcommittees, but there is no question that Members hold too many committee assignments. Abolishing committees -- and many subcommittees -- is a reform you must consider. At the same time, it is a sure invitation to interest group warfare. I well recall the ill-fated ventures to abolish the Small Business and

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Veterans Affairs Committees. But much of the concern over the fracturing of the Congress might be abated if Members simply were prevented from serving on any more than a limited number of Committees -- and the limits were enforced.

In his testimony before this Committee, Senator Mitchell stated that Senators now collectively hold 48 more full committee assignments than the rules allow. He points out that each extra committee assignment means additional subcommittee assignments. Senator Byrd echoes this concern in his statement.

Senator Mitchell has proposed that the Senate leadership make an agreement to enforce the rules in the 104th Congress. This proposal only makes sense. And if Senators are forced to limit their Committee assignments, some committees may well be scaled back or abolished altogether.

There has also been talk about narrowing committee jurisdiction to avoid the problems caused by overlapping jurisdictions. Another proposal would reorganize the committees so that their jurisdictions better corresponded with the organization of the Executive Branch. Still others would attempt to reorganize the House and Senate committees into committees with corresponding jurisdiction. I have long believed that the organization of governmental institutions plays a significant role in determining public policy. These proposals warrant your attention.

These reforms are difficult, but attainable. If this Committee does nothing more than enable Congress to take hold of its schedule, it will have made a significant contribution to the public good.

#### CONGRESS MUST ENACT CAMPAIGN REFORM LEGISLATION

If Congress is to reclaim the respect of the American people, it must earn that respect. Last November, voters in 14 states were so disgusted with Congress that they voted to enact term limits. I do not support term limits, but I believe I understand the frustration and anger that lead many people to vote for such reforms.

I am convinced that Congress must address the issue of campaign reform. The cost of political campaigns has reached obscene proportions. The Washington Post reports that the average cost of a Senate campaign is now in the neighborhood of \$4 million. To meet these expenses, the Post says that Senators must raise \$12,000 each week of their six year terms. The cost of campaigns quickly turns Members into mendicants.

The need to raise tremendous amounts of money for political campaigns fuels the notion that special interests run the Congress. But there is another problem. The cost of campaigns keeps good people from seeking public office. Indeed,

many campaign war chests are raised for the simple purpose of intimidating likely opposition candidates.

And so, while Members of Congress are elected to serve the public interest, they are forced to spend untold hours in the business of fundraising. Rules for campaign finance fill thick books. Campaign consultants make considerable money advising candidates on ways to raise still more money. More than a few Members have elected to retire from Congress rather than put themselves through another grueling cycle of fundraising campaigns.

Many members of this Committee have been at the vanguard of efforts to reform the campaign finance laws. In particular, Senator David Boren and Congressman Sam Gejdenson have been leaders on this issue. I have reviewed the legislation that passed Congress last year, and I support it. Its proposals to limit campaign spending, limit PAC contributions, and restrain the abuse of the franking privilege, among others, are solid reforms. They deserve the support of the Congress.

But whether we achieve campaign reform or not, I am encouraged by evidence that television advertising may be losing its luster in political campaigns. In the last presidential election, advertising proved to be of little or no consequence. The three presidential campaigns were largely waged on radio and television talk shows, and the presidential debates attracted



record audiences. These events indicate that the need to spend tremendous amounts of money on electoral campaigns may be more a matter of perception than reality.

There may be some merit, therefore, in the return to old-style "retail politics", campaigns that take a candidate's case directly to the people through town meetings, radio and television talk shows, public debates, and the simple practice of walking the streets of the district and meeting the people.

This is by no means a complete answer to the problem. Campaign reform legislation is still needed. But I think it offers a way for individual members to begin the process of reform, even if Congress proves unwilling to rewrite the campaign laws.

There is another matter that concerns me greatly; namely, the negative tone of political campaigns. Personal attack, character assassination and outright lies are far too commonplace in political advertising. Here again, these advertisements do serious damage to the political process. The public has plainly stated its disgust with this style of campaigning, and yet it continues. Senators Fritz Hollings, Dan Inouye, and Jack Danforth have been working for several years to find ways in which to constrain the unbridled use of negative campaign advertising. Their legislation, "The Clean Campaign Act of 1993," would require candidates who refer to their opponents

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in radio or television advertisements to do so in person. If they refuse, their opponent is entitled to a free rebuttal. The bill would also grant free response time to candidates who are the victim of political ads placed by political action committees or other third parties. These efforts deserve support.

In the past, the debate over campaign reform has repeatedly broken down over claims that one side or another is seeking unfair advantage through the device of campaign reform. Here again, I am convinced that there is room for agreement on many issues. I urge you to agree where you can and to move forward.

**CONGRESS SHOULD SEEK OPPORTUNITIES TO RAISE THE VISIBILITY OF  
PUBLIC POLICY DEBATES**

I want to read something that Bob Byrd said in his testimony to this Committee, because I believe it bears repeating:

[O]ne reason that the hard choices are so difficult for members of Congress is that the groundwork for acceptance of such choices by the public is rarely laid by extensive debate in the Congress. The less the Senate publicly airs the great issues of the day, the more we leave a vacuum -- an information vacuum that will be quickly and willingly filled by self-serving interest groups, media hucksters, misinformation, cliches, inane platitudes, and political demagoguery.

Senator Byrd is right. Congress has ignored its responsibility to inform the public, and it has ceased to be a forum for great public policy debates. This problem is not

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simply a Senate problem. Former Congressman Bill Frenzel and others have levelled the same accusation at the House.

I believe that, at the very least, the public dissatisfaction with Congress stems, in part, from an incomplete understanding of what Congress does. Most of the work of the Congress is done in committee, and most Floor debates take place during the day, when television audiences are small. News coverage of public policy debates is too often reduced to the proverbial "soundbite," while debates over Congressional perks dominate the news.

If Congress can agree upon a legislative agenda, it is a small matter to schedule debates on important issues to occur in prime time when they can reach a wider audience. In this way, Members of Congress -- majority and minority alike -- will have the opportunity to bring debates on important issues directly into American living rooms, sidestepping the spin doctors and the infamous "talking heads" that now dominate and in large measure control the debate on public policy issues.

If there is a real agenda for Congressional action, rather than the haphazard scheme that now prevails, I predict that there will be real debate, and the debates in the halls of Congress will join debates on editorial pages, in classrooms, on college campuses, and at the workplace. In the last presidential election, voter participation increased after years of decline.

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There are many reasons for this. I think one reason is that voters were given meaningful opportunities to consider the candidates' views, rather than a melange of photo opportunities and 30-second commercials. The American people will eagerly watch and participate in public policy debates if their political leaders will take seriously their job of informing the public, and respect them enough to invite them to participate.

I thank you again for this opportunity. You have much work to do. I know that you will approach this task with an eye toward achieving the kind of longlasting reform that can only be achieved through the process of negotiation and consensus, and that you will refuse any entreaties to make "reform" a tool for political advantage. There is so much that can be done when men and women of good will are willing to work together.

I look forward to your success.



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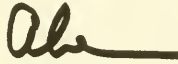
April 12, 1993

Hon. David Boren  
Hon. Lee Hamilton  
Joint Committee on the  
Organization of the Congress  
Ford House Office Building  
Room 175 D  
Washington, D.C. 20515

Dear Chairman Boren and Chairman Hamilton:

During my testimony before your Committee, Senator Lott asked me whether I had served as Chairman of the Senate Select Committee on Ethics. I told him that I had not. This is true, but I find on reviewing the transcript that I may have left the impression that I never served on the Committee in any capacity. In fact, I briefly served on the Committee, from February 1977 until April 1979, although never as Chairman. I would greatly appreciate it if you would allow me to clarify my testimony by including this letter in the hearing record.

Very truly yours,



Abraham A. Ribicoff

Testimony of

Thomas E. Mann  
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American Enterprise Institute

Prepared for Delivery Before the  
Joint Committee on the Organization of Congress  
U.S. Congress

February 16, 1993

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## Introduction

We are pleased to appear before you today as co-directors of the Renewing Congress Project, a joint effort of the American Enterprise Institute and The Brookings Institution designed to provide an independent assessment of Congress and to offer recommendations for improving its effectiveness and restoring its legitimacy within the American political system.

During the past year dozens of individuals from the academic, governmental, policy and journalistic communities have contributed to the project by participating in roundtable discussions and conferences, conducting research, writing memoranda and commissioned papers, and offering detailed critiques of our draft reports. As you know, we issued our initial report this past November to provide new and returning members of the House of Representatives with a perspective on congressional reform in time for the organizing meetings of the party caucuses in early December. Some of the issues we raised were addressed by the parties; many were not. We believe that much of that report is relevant to the work of your committee and we hope you are able to make use of it.

But today we will speak to the broad mandate of your committee, touching on the institutional health of the House and Senate and on the relations between Congress and other components of the political system. Our work is still in progress. We intend to submit a more extensive report to your committee in the spring. However, our testimony today will give you a clear sense of our thinking on the agenda of the Joint Committee and the need for reform.

Your task is a formidable one, especially given the time frame under which you must operate. It requires you to focus quickly on what the priorities are for congressional change: what needs to be addressed immediately, what might demand



particularly sweeping change, and what might be the focus of longer study.

But while you must operate on a tight timetable, you should not rush to judgment. First, you need to step back, identifying what functions Congress should be performing and where it is falling short. Then, you need to look at which of the problems plaguing Congress, that keep it from performing its job as it should, are amenable to structural solution or amelioration. Then and only then, can you set your priorities and work through the reforms you will recommend to the House and Senate as a whole.

The temptation by many will be to look at the Joint Committee as a successor to the Bolling Committee and Stevenson Committee — one designed simply to reform the House and Senate committee systems. No doubt, the committee systems are central to the operation of Congress, but, as you have indicated with your own list of priorities, the role of the Joint Committee is a much broader one, as was true of its real predecessor, the LaFollette-Monroney Committee of 1946. Still, within your eight areas of concentration, there will be some specific things that are highly significant and others that are more peripheral.

At the same time, the Joint Committee needs to sort out problems that are intrinsic to the legislative institution from those that are tied to broad political and societal conditions and those that are related to transient patterns. It is clear, for example, that many of the problems of today's Congress, including the extraordinarily high level of partisan tension in the House, have been created or exacerbated by the extended era of divided government, including twelve consecutive years of it from 1981 through 1992. Divided government is gone — but some of the problems associated with it remain, and will have to be addressed by the Joint Committee. However, the appropriate ways of dealing with those problems may well be different as assumptions,

reflecting realities, change.

Many Republicans, for example, inured to a long era where their party dominated the White House and the opposition dominated Congress, have pushed for reforms that would weaken Congress vis-à-vis the president. Their reform ideas, based on past conditions and assumptions, need to be reconsidered. Is it really in their long-term interest, much less the country's, to weaken the First Branch of government? Confronted with united government where their party is in charge and accountable, Congressional Democrats need to reconsider their role as a majority party, and their relationship with the minority party.

They also need to reconsider Congress' relationship with the president. With the often poisonous partisan tension between the branches gone with the demise of divided government, some issues that simply could not be coolly and rationally discussed are now open for analysis and consideration. For example, the question of micromanagement — the charge that Congress writes too much detail into laws, and fails to give executive officials enough leeway to carry out their jobs when authority is delegated to them by Congress — can now be dealt with openly and appropriately.

Another example is the ethics question. The contemporary public distaste for Congress has been shaped, to some considerable degree, by the wave of alleged scandals, institutional and individual, that have swept Capitol Hill in recent years and that have been covered extensively in the press. The public and press reaction to this wave has led Congress to enact a series of ethics reforms and to consider additional changes. Some of these issues, including campaign finance reform, lobbying reform and the ethics process itself, clearly must be addressed by the 103rd Congress. In the process, your committee can step back and bring some much-needed perspective to this set of concerns, separating serious individual and institutional shortcomings from the

hyperbole associated with contemporary press coverage of Congress.

Clearly, Congress has left itself open to legitimate criticism by many of its own actions or inactions. The ways in which Congress has handled the issue of exemptions from laws it passes for others is a good example. In some cases, like occupational safety and health, Congress has taken no steps to apply standards to itself that approximate or equal those applied to others. In other instances, like fair employment practices, its enforcement procedures for itself have been notably weak. If press coverage of this issue has often been inaccurate — reporting for example, that Congress exempts itself from laws when it is in fact exempting itself from *executive branch agency enforcement* — Congress has done little to educate either the press or the public on the appropriate issues here, much less to alleviate the appropriate concern about its actions.

Both in its direct responses to press criticism, and as a way of compensating for underestimating public resentment, Congress has shown a distressing hypersensitivity to public opinion. Congress is frequently criticized for being insensitive to public views. In our judgment, the problem has been nearly the opposite — a battered, defensive and edgy Congress has been overly sensitive to every movement in public opinion, often losing sight of the need to step back, to transform public opinion into public judgment. The Joint Committee obviously needs to step back as it assesses Congress' problems and suggests some solutions.

What kind of Congress do we want? To begin with, it is our judgment that the best Congress is one that is strong, vibrant, self-confident and assertive. To be sure, this Congress should exist in an environment where its partner and rival institutions, the executive and the judiciary, are also strong, vibrant, self-confident and assertive. But the Joint Committee in general should advance institutional changes that

strengthen Congress, and resist those that weaken the legislative branch.

What do we mean by strengthening Congress in this context? To begin, a stronger Congress would improve its capacity to come to independent judgment on public policy issues, while allowing adequate avenues to express the full range of diverse viewpoints represented in the institution, including those of the minority party. There is to be sure a built-in tension here. Congress elects 535 people individually, each representing distinct constituencies. But the role of the institution and its decision-making structures is to transform the innate individualism and parochialism in the institution into a collective judgment. The tension between representation and the capacity of an institution to act must be appropriately balanced. We believe that the system of late has tilted too far toward the interests and ambitions of individual members at the expense of collective responsibility, and the balance needs redress.

A stronger Congress would give the majority the tools it needs to set an institutional agenda and to act on it, to express its collective voice when it can do so. And a stronger Congress would have a much improved deliberative capacity — a greater ability, in other words, to consider and debate alternatives, to process and communicate information, both in the context of considering legislation, and more broadly, to educate members and public alike.

In each of the areas of special concern to the Joint Committee, we will suggest where we believe Congress falls short of these standards and what reforms might improve its institutional capacity. Our recommendations to create more opportunities for genuine deliberation, encourage bargaining, focus attention on major, long-term problems rather than minor, short-term ones, and upgrade the professionalism within Congress are consistent with republican principles. But these are oftentimes at odds with what the public senses is wrong: that Congress is populated by self-serving,



career politicians out-of-touch with ordinary Americans and unconcerned about the public interest. The challenge facing the Joint Committee is to reconcile the democratic critique of Congress with the clear need to preserve and strengthen its republican virtues.

### Committees

Reform of the committee system, as we suggest above, will be viewed by many as the core of the Joint Committee's work. That is not surprising; ever since Woodrow Wilson's century-old, now-clichéd observation in Congressional Government that "Congress in its committees is Congress at work," observers and members alike have seen the committee system as the key functioning unit of the legislature. The committee system has frequently been reformed, in whole or in part, over the past century; attempts at reform have been even more frequent.

The need for periodic reform is obvious. Every meaningful legislature requires a division of labor, a way to examine in some depth and detail the important policy issues of the time. But no system can possibly be devised that avoids overlap, duplication and tension among committees with conflicting or parallel responsibilities. And no system devised to focus on the key policy issues of the time will be able to foresee the changing policy issues in the future. The last set of committee reforms tried to take issues like energy, the environment and transportation and provide them with central focal points and primacy which they had previously been lacking; today, an issue like international economic policy, which has been a stepchild in Congress, should clearly be showcased through a consolidation of jurisdiction.

At the same time, the history of the committee system shows a constant pressure toward committee size and assignment inflation. Committee slots are

valuable currency for leaders to use to satisfy the needs and demands of their members; individual lawmakers, for their part, have a seemingly insatiable desire to add more items to their letterheads. Over time, with more slots and more assignments, a sensible division of labor degenerates into excessive fragmentation, reducing each committee's attendance and effectiveness, distracting members from their ability to learn, deliberate and to specialize. Periodically, then, the need to cut back, pruning unnecessary panels, reducing committee sizes, and restraining individual assignments, is a necessary and positive function.

Your committee should not shirk its responsibility of examining committee jurisdictions out of fear of dooming its entire package of reforms to defeat. But neither should you make a major realignment of committee jurisdictions in the House and Senate the ultimate test of your success or failure. Jurisdictions should be considered in the broader context of what weakens the ability of the committee system to contribute to deliberation and policymaking in Congress.

The committee system is the core of Congress' deliberative process. It is the basic way the institution divides its labor. In the committee system, the institution can find constructive ways to channel the energies, talents, imaginations and interests of its individual members, providing more access into government for constituents and interests in the society, and insuring that ideas for policy can be properly developed. Ideally, this process should enhance the deliberative capacity of the institution, allowing time and energy to be devoted to the gamut of policy areas and interests, while also allowing a huge and complex institution to process and consider thousands of separate decisions.

In the broadest sense, the Joint Committee has to look at whether the basic structure of the committee system provides an appropriate balance between these

forces; whether minor adjustments and periodic restructuring will be adequate or whether more dramatic change in the system would be a better approach.

In 1976, when the Stevenson Committee in the Senate considered committee system reform, it drew up an option for radical change in the Senate's committee structure. That plan would have consolidated the Senate's 31 committees (including the joint panels) into five, each with twenty members and some rotation of membership: Human Resources, Governmental Resources, International Resources, Physical Resources, and Financial Resources. The Stevenson Committee and the Senate at that time opted for a more restrained change, that still eliminated several committees and a larger number of subcommittees.

The Joint Committee might well decide to consider a radical change of this sort; we would be happy to help you develop one. But it is also the case that significant change can occur in the committee system without turning the whole institution of Congress upside down.

We recommend an approach to committee reform that features four elements: (1) a reduction in the number and sizes of committees and in the assignments held by each member, (2) a consolidation and partial realignment of committee jurisdictions, (3) more extensive use of mechanisms such as ad hoc committees to deal with pressing policy problems that cut across jurisdictional boundaries, and (4) changes in committee procedures designed to increase attendance and improve the quality of information gathering and deliberation.

Number, Sizes, Assignments      The House Democratic Caucus took an important first step in reducing the number of subcommittees by sixteen (subject unfortunately to a waiver for one or more slated for extinction) and by applying the subcommittee assignment limit of five to select committees and legislative task forces.

But much more needs to be done in both chambers to concentrate the energies of members and to avoid the schedule conflicts that reduce attendance and weaken the quality of deliberation. Over the last decade the number of seats on House committees and subcommittees has grown steadily (from 2,511 in 1982 to 3,177 in 1992), as have member assignments (from an average of 5.5 to 6.8). We recommend that the House move to further reduce the number of subcommittees and the size of committees. We further suggest that House members be limited to two committee and four subcommittee assignments, and that the widespread practice of temporary assignments and exemptions from the rules be abandoned. It may be necessary to incorporate limits on committee size and assignments into the rules of the House.

Because the Senate partially consolidated its committee system in the late 1970s, inflation in committee slots and assignments seems on the surface less of a problem there than in the House. Yet the reality is that senators continue to be spread unbelievably thin, with an average of 11 committee and subcommittee assignments. The limits on assignments adopted by the Senate (two major, one minor) have been gradually diluted by exceptions, waivers and temporary assignments and the number of panel slots has crept up over the last decade. The increased activism by subcommittees in both chambers has worsened the problem. We recommend at a minimum that the present limitation on assignments be strictly enforced. We would prefer to see the Senate move toward a consolidated committee system in which senators are limited to two committee assignments.

Consolidation, Jurisdictional Realignment . The Joint Committee faces no more daunting task than grappling with committee jurisdictions. Because members view their committees as crucial to their legislative careers and outside interests see committees as instruments for gaining access and advancing their legislative agenda,



intense and often bitter resistance emerges when ambitious proposals are advanced to realign committee jurisdictions.

And yet with the end of the Cold War, and with it the need to reformulate U.S. security policy and institutions, and in light of the massive restructuring in the private sector and at other levels of government to meet the challenges of the new world, it would be inexcusable for the Congress to exempt itself from this necessary self-examination. We have several suggestions on how you might proceed.

First, both chambers should bite the bullet and eliminate their select and special committees (excluding intelligence). The work of these units — holding hearings and investigations and issuing reports — can be more constructively and efficiently conducted by committees with legislative jurisdiction. As argued recently on the House floor in the debate over select committees, temporary committees should be temporary.

Second, the House in particular should move toward a system of committees of more equal breadth and workload, a characteristic partially achieved by the Senate in its last committee reorganization. Wherever possible, minor committees should be folded into other panels. For example, the House would do well to follow the Senate by shifting the jurisdictions of the DC and Post Office committees into Government Operations. Other committees characterized primarily by their unabashed advocacy of outspoken constituency groups (Veterans Affairs, Merchant Marine, Small Business) could be abolished, with each of their jurisdictions being shifted to other committees. One could even make a case for transferring the functions of the House Administration Committee to other committee, administrative and leadership units. All of these recommendations will be controversial and the Joint Committee will have to proceed with a clear view of benefit/cost ratios.

Third, opportunities should be sought to focus committee attention on important new issues by consolidating jurisdiction. Our primary nominee here is international economic policy, which is increasingly seen as a crucial element of our foreign policy. As part of this exercise, the Joint Committee should consider what changes in executive branch organization (coupled with parallel changes in congressional committee organization) might help the government adjust to the end of the Cold War.

Ad Hoc Mechanisms As we argued above, no committee system can avoid some degree of jurisdictional overlap or anticipate changing policy issues. However desirable it is to have a tidy process in which only a single committee readies legislation for the floor, each chamber must have mechanisms and strategies for dealing with the fact that several committees will often demand and merit a piece of the action on pressing policy problems. In the House this argues for more frequent use of the ad hoc committee authority, under which the Speaker can propose to the House the creation of a temporary panel, with members drawn from a number of standing committees and a chair designated by the Speaker, to address an important policy matter comprehensively and quickly. One can imagine the utility of this mechanism for dealing with the complex problem of health care reform, for example. We also recommend more time limits being imposed on multiple referrals and the use of a kind of amicus curiae process for referrals, in which secondary committees could make their views known by filing "friend of the court" reports to the House floor but not delay or prevent the movement of legislation from the core committee to the floor.

While the problem of jurisdictional overlap and time-consuming multiple referrals is not as chronic in the Senate as in the House, similar mechanisms are needed in the Senate for coping with the inevitable delays, duplication of effort, and turf wars when policy problems cut across jurisdictional boundaries. The majority

leader should be free to propose through privileged, nondebatable motions the creation of ad hoc committees on matters involving two or more standing committees, as well as on a few important matters that generate such broad interest that a single committee cannot capture the variation in opinion.

Congress would be well advised to embrace this strategy of "tasking," which is being utilized successfully in the private sector.

Committee Processes Committee hearings have been criticized on a number of fronts: they are poorly scheduled and attended; drag on too long; waste too much time while they are in session; fail to elicit useful information; deny members adequate time to delve into complex issues; play to the preconceptions of members; and often have little impact on the writing of legislative products which might appear at the end of the committee process.

In response to these criticisms, the Joint Committee might constructively consider, among other ideas, the use of seminars rather than public hearings, an "early bird" rather than seniority rule for recognizing members for questioning of witnesses, and computerized scheduling for avoiding excessive meeting conflicts.

### Floor Deliberation and Scheduling

Senate Proposing changes in the conduct of activity on the Senate floor constitutes the most difficult aspect of reforming Congress — even harder than changing committee jurisdictions — because it deals most directly with the basic nature of the institution. It is difficult for the Senate to engage reform issues which would speed up the pace of its deliberations, or introduce forcing mechanisms which limit the ability of senators to engage in extended debate. The Senate should not be reformed to look just like a smaller version of the House.

Nonetheless, change is essential. While the Senate likes to refer to itself as the world's greatest deliberative body, it is precisely that quality — deliberation — which is damaged by the process of endless delays and unfocused discussion which governs Senate consideration of many measures.

The Senate has become increasingly less manageable as filibusters have become virtually commonplace on both major and minor pieces of legislation, raising the standard for passage of even routine bills from 50 to 60 votes and resulting in frequent delays and uncertainties in scheduling, stop and go patterns of floor debate, and the use of holds and other obstructionist techniques which make the institution hostage to the whims of individual senators.

The Senate needs to create opportunities for debate to take place without the constant threat of filibuster-driven delay. The most significant change the Senate could consider would be to sharply restrict the use of holds for capricious reasons by individual senators, and require public identification of any senator requesting a hold.

We endorse the recommendations presented to the joint committee last month by Majority Leader Mitchell. We believe that his proposals will help streamline routine aspects of Senate procedure while preserving the minority's rights to extend debate and delay votes.

In addition, to further facilitate floor action, we recommend that the Senate create a committee of the whole for floor action. The Senate has used a committee of the whole in the past, but the mechanism was dropped in 1930 on the grounds that every action it took could be repeated again outside the committee. Clearly, this objection had merit, and we do not propose reviving the committee as a mechanism to cause delay.

But we do believe that a committee of the whole, operating with more stringent



debate and amendment limitations than the Senate itself, could be used to handle the bulk of less controversial legislation which often takes far longer to process than it needs to because senators are not used to disciplining themselves. Our proposed committee of the whole would be akin to the "Consent Calendar" process of the House for dealing with routine matters. We believe that senators would welcome a process which expedited consideration of some legislation, leaving more time to devote to significant debate on controversial legislation.

In the committee of the whole the Senate would:

- conduct general debate on bills, fixed by rule as in the House;
- consider legislation for amendment by title;
- allow only germane amendments;
- limit debate on amendments (to perhaps one half-hour for each side);
- limit debate on any debatable procedural motion, point of order or appeal to

30 minutes or less;

- further restrict debate or amendments by majority vote.

The Senate would go into the committee of the whole upon the adoption by supermajority vote of a non-debatable motion offered by the Majority Leader or his designee; it would rise from the committee on a non-debateable motion, subject to a majority vote.

Outside of the committee of the whole, the Senate would conduct its business as usual — i.e. limits on debate and amendments could be applied only by unanimous consent or by invoking cloture. In this fashion, the existing rights of senators would be preserved, and at the same time, the bulk of debate on legislation would be more manageable and predictable. The majority leader would no longer be prevented from moving to some reasonably structured debate and amendments by individual objections

to unanimous consent requests.

Other steps which the Senate might consider, some of which were suggested by Senator Byrd and others, and recommended by the Rules and Administration Committee in 1988 and earlier, could:

- limit debate on the motion to proceed
- impose a three-fifths requirement to consider non-germane amendments outside the committee of the whole;
- provide by majority vote for section-by-section consideration of legislation;
- allow a Senate majority to require that all amendments to a measure be submitted to the desk by a time certain, and that all second-degree amendments offered later be germane to the submitted amendments.

None of these changes, in our view, alter in any fundamental way the Senate's traditional role as a forum for the expression of minority views or as a deliberative body; indeed, having a committee of the whole might well focus general debate and provide a crispness to deliberation currently lacking in the institution.

House The House, unlike the Senate, has few problems disposing of legislation once it has reached the floor. The key questions involve deciding how to schedule legislation and ensure a deliberative process during its consideration.

As we noted in our first report, House floor scheduling has long had an ad hoc quality, dictated by the availability of bills and the wishes of committee and subcommittee chairmen. There has been little in the way of long range scheduling over weeks and months to develop a coherent agenda for the House and to inform members what will be expected of them. Even to the degree schedules are cobbled together now, there are often last minute changes which disrupt the plans of members and committees which schedule their work around expected floor action.

To some degree, confusion is inevitable in any legislative body, but the mechanics of scheduling too often seem to have taken control, rather than being utilized to support leadership policy decisions.

We have recommended that the House go to a 3-week on, 1 week off scheduling system similar to the Senate, and that floor action be intensive during the work weeks (a pattern less and less visible in the Senate). This requires a specific decision by the leadership not to accommodate the traditional Tuesday to Thursday club mentality of the institution. We anticipate problems, and have also noted signs that the large new freshman class, in its desire to be responsive to constituents, would like to have frequent long weekends in their districts. But we hope that members realize that their goal of ending gridlock in Congress requires them to be in Washington to do work, and that a more intelligently designed schedule will still allow them plenty of quality time at home.

We were delighted with the House majority's action last December to create a Speaker's Working Group on Policy Development. We hope it will be constituted in an expedited fashion and given substantial responsibilities. We hope, for example, that the new Working Group will play a major role in recommending disposition of complicated referral questions on major bills, and in coordinating priorities in scheduling. Their work can help the Speaker more aggressively and creatively use his referral authority to set deadlines, and to mesh those deadlines with decisions on advance floor scheduling.

Suspension of the rules, which is the most frequent technique used to pass less controversial legislation, should be extended to 5 days a week as a scheduling tool. In our report, we speculated that the availability of this device, with proper advance notice to members and consultation with the minority, would encourage use of the

early portion of a week for more substantive legislation and give members greater incentive to remain in Washington.

Perhaps the most troublesome and controversial aspect of House floor procedure results from the difficulty in striking a balance between considering legislation in a timely and orderly manner and allowing the minority party and individual members meaningful opportunities to offer alternative versions of legislation. The House debates and votes on legislation in a parliamentary situation where time is under some sort of control. It deals with an issue and moves on, in a straight line, unlike the Senate, which may never vote on a piece of legislation and shifts back and forth among pending proposals like a circus juggler. The House employs various parliamentary devices which both strictly limit the use of time and the opportunities for amendment, and others which open up the process to individual members proposing amendments or speaking. It is the balance between these devices which lets the House be representative and deliberative, but also definitive, in its actions.

The basic rules of the House provide for the one-hour rule in debate, the motion for the previous question, strict limits on the opportunity for quorum calls, strong recognition powers in the Speaker, and the ability to postpone and cluster votes, all as devices to limit delays, provide structure and bring questions to a resolution. The minority is guaranteed in the standing rules the power to offer the motion to recommit and to control a designated share of debate time on certain measures and motions.

However, the rules are a means to an end and the standing rules of the House do not always serve the House's interests on many occasions. Special rules are required to provide for rational consideration of particular bills. The debate and amending process in the Committee of the Whole House on the State of the Union provides the most frequent opportunities for deliberation as bills are debated and



considered for amendment under the 5-minute rule pursuant to a special rule reported by the Rules Committee and adopted by the House, and it is here that perceived abuses most often occur.

The minority strongly advocates the use of open rules which allow unlimited offering of germane amendments under the five-minute rule, and has offered statistics describing what it considers alarming trends toward use of more restrictive rules. We see nothing wrong with the use of restrictive rules for managing debate, in a limited number of cases, as long as they allow sufficient deliberation on the major proposals and adequate participation by a broad range of members pursuing their representative interests on behalf of their constituencies. There is nothing wrong with closed rules or modified rules per se as long as they serve these purposes.

It is impossible for the House to take the time to listen to the views of all members on all issues, nor is it desirable for members to feel that they should attempt to address every issue that comes before the House. The House developed a committee system to provide for division of labor and specialization. Rules for floor consideration naturally give preference to members of the relevant committees handling a particular bill, and they should also allow access to the most vigorous opponents and those who propose significant amendments.

On the other hand, use of these restrictive special rules should not become the norm. They should be used only when absolutely necessary. An open rule should not be perceived, as it increasingly may be, as an aberration, a luxury the House cannot afford. The increasing practice of the Rules Committee majority of routinely announcing on the floor that a rule on a forthcoming bill might be restrictive, and providing a deadline for members to submit amendments they might wish to offer, represents a disturbing trend which should be rolled back.

It is usually impossible to define the point when a measure is considered under conditions unfair to the minority. Depending on the particular situation, adoption of a rule which does not permit a particular amendment to be considered could be interpreted as an attempt to silence or censure the minority; or as a management tool to save the time of the House from a frivolous amendment without significant support; or as a policy-making device to allow the minority some access, but not so much as to let it chip away constantly at a majority proposal until it finally finds a way to weaken it. The amending process should be used by the minority as a means of sharpening its own views and drafting legislative proposals which maximize their chances of passage on the floor, not as a means of pure harassment of the majority or endless attempts to probe for weaknesses.

Problems do arise when the Rules Committee, as the vehicle for the majority to structure floor debate, goes overboard to advantage the pending legislation at the expense of alternative proposals desired by the minority or by minority blocs within the majority. These advantages can come in the form of limited debate time, limited number and disadvantageous sequence of amendments, and restrictions on the minority's right to offer a motion to recommit with instructions. The majority has developed various rationalizations for its actions — preventing excessive delays in the floor schedule, blocking "harassment" by the minority and floor votes intended to "embarrass" rather than to represent "legitimate" alternative views, barring "killer amendments" which could gut a bill, since the minority can always vote against the bill on final passage instead. Taken together, however, they constitute a disregard for minority rights, the rights of individual members, and a dismissal of the constructive role which the minority or other dissenters can sometimes play in offering alternatives and pointing out flaws in a pending measure.

We recommend that the minority be guaranteed the right to offer a motion to recommit with instructions, if authorized by the minority leader. The motion guarantees that the minority will always have at least one opportunity to voice its views. The majority goes too far when it tries to dictate to the minority what the minority's views might be and how they should be offered. The role of the Minority Leader should be upgraded to give the leadership responsibility for ensuring that the motion is used for purposes constructive to the minority's agenda. The Speaker should be given the power to postpone debate and votes on the motion to recommit and final passage for one legislative day, in order to encourage the majority to prepare for serious debate on the motion.

We also recommend that the majority allow other avenues for amendments to be offered as part of the normal amending process, and that it not approach these issues with a mind-set that the minority will get "one shot" and that this constitutes fairness. The bias should be toward openness, unless the circumstances on a particular bill demand some sort of limitation, and even then there should be limits beyond which the majority cannot go.

Debate As we discussed in some detail in our initial report, the quality of debate in Congress has been diminished as members spend less time on the floor and come to votes preprogrammed on issues by information gleaned from staff and lobbyists. There is little real interaction and discussion among members. What passes for debate are often lonely declamations by members or senators at times when legislative business has been concluded.

In our first report, we recommended the use of Oxford-Union style debates as one means of encouraging deliberation on the House and Senate floor, forcing members to engage the ideas of the other party in a public setting, and educate the American

people on Congress' role as the vehicle for policy change in America. We are greatly encouraged by the commitment of majority leaders in both houses to proceed in this fashion. The Joint Committee should consider the mechanics of how these debates might be conducted and what rules are required. We favor a more formalized process which yields time to members to perform specific tasks in debate for a specified period of time.

What is also needed in both houses of Congress is a focus on reintegrating debate into the process of consideration of legislation, rather than for purely individual concerns or as a form of protest, as is frequently the case in the House's special order time. By utilizing debate more constructively, Congress can overcome the mind-set of members, particularly in the House, that debate is merely a filler time dividing periods of important activity and giving members a respite to engage in other activities. The attitude toward general debate in the House frequently resembles the Senate's use of quorum calls, which are intended to delay action while members reach the floor or while private consultations occur.

In recent years, on some bills, notably the defense authorization bill, the House has broken up periods of general debate into sections which deal with specific policy issues in the bill. The House then considers and votes on even more specific amendments, and might then resume debate on some other issue. We find this practice constructive and recommend that it be used more frequently on complex legislation to help members focus on broader questions as they then move toward more particularistic amendments. If members find that debate can actually help them understand issues, or is focused enough on specific policy questions to avoid the negative perceptions of the current process of general debate, there will be additional incentives to come to the floor and participate, or at least listen.



### **Budget Process**

In view of the special importance attached to the budget process by several members of this committee as well as the frustration over deficit budgeting felt by many inside and outside the Congress, we have decided to include an extended treatment of the budget, authorization and appropriations processes in our testimony. As you will see, we are skeptical of many radical proposals to simplify the process or to shift substantial powers from the Congress to the president. But we do believe real problems exist and that constructive changes can be implemented; we have drawn heavily on the work of our Brookings colleague Joseph White to discuss some of the problems and several possible solutions.

Congress has two stakes in the budget process. It wants a process that serves the nation's needs for a reasonable balance of the desires for government action, low taxes, and lower deficits. At the same time, Congress needs to assure that its budget disputes do not paralyze Congress itself.

Since 1980 neither legislators nor the public have been satisfied with the budget process on either ground. As a result, the budget process has suffered, and Congress has suffered with it, endless revisions or "improvements." The results of those measures teach certain lessons about what might work in the future.

But we should also remember that the situation now is very different from the past twelve years. How Congress handles the budget is inextricably linked to what the president does. Many measures of the 1980s were products of competition between two branches of the government, controlled by opposite parties. The severity of many problems could be greatly diminished by greater cooperation between the branches. And some of what might be done to improve the government's budget output could best be done by the executive, not Congress.

But it is also necessary to keep in mind that the conflicts and stalemates of the past dozen years have left a legacy of unsustainable deficits. With deficits of the size recently projected by CBO, there is no workable budget process in Congress, no matter how boldly the Joint Committee labors to reform the process.

### Deficit Reduction

Three modes of deficit reduction are open to Congress.

The first mode is the normal legislative process. Annual appropriations can be cut, and authorizing committees can report legislation reducing entitlements and raising taxes, without any other processes. This is, of course, the pre-1974 system, and it worked (when it did) because of substantial presidential standard-setting through the executive budget process.

The second mode is triggered by the congressional budget process. The budget committees can draft resolutions, they are debated and a conference version approved, and that resolution cuts the total 302(a) allocation for appropriations and instructs authorizers to report reconciliation legislation. Reconciliation is then packaged and passed. That is, in essence, the 1980-84 system. The budget resolution in large measure was used to set a standard because the president's budget was deemed unacceptable.

The third mode relies on budget summits and/or long-term trigger systems. Congress and the president agree on some long-term deficit-reduction targets. They then create some terrible threat in hopes of forcing action in one of the first two modes, as in Gramm-Rudman-Hollings. Or, they enact the equivalent of the reconciliation legislation, determine the appropriations 302(a) in advance with a series of appropriations "caps," and create procedures that effectively prevent backing out on the deal. That is the 1990 Budget Enforcement Act (BEA) model. Each approach is a

reaction to the fact that both the president's budget and the budget resolution had become efforts to avoid blame, forcing the other branch to propose the serious measures. Only a negotiation among leaders of the two branches could produce a serious plan.

Budget reformers must begin with the lessons of this third mode, BEA and Gramm-Rudman. Those rules are in place and, especially in the form of the extraordinary majorities for Senate action, have to be addressed before anything else is done.

Building on the BEA In one sense, the BEA is an unqualified success. Congress and the Bush administration adhered quite closely to the constraints of pay/go and the appropriations caps. The process suffered less severe delays and upsets in 1991-92 than in most previous years. Unfortunately, the BEA, primarily due to the intercession of a series of largely unforeseeable economic and international events and continued growth in entitlement spending, did not serve to reduce the deficit to an acceptable level.

One aspect of the BEA, a multi-year agreement between Congress and the president, is clearly useful. These agreements cannot determine most budget details — for instance, agency appropriations. But by forcing attention to long-term deficits and setting parameters for what's left of fiscal policy, these agreements provide some needed stability to budgeting. Formal efforts to mandate such a process, such as making the budget resolution a joint resolution, risk shifting power to the president and are more likely to delay than facilitate decision-making. But legislators who object to summit agreements in principle are ignoring their evident usefulness.

We strongly recommend against Congress devising a new deficit-reduction scheme like the old Gramm-Rudman. We believe President Clinton took appropriate

action in retaining the flexible targets of the Budget Enforcement Act in lieu of the fixed targets of Gramm-Rudman. Fixed targets are a sham. They don't really reduce the deficit; in the five years they were tried, they were never met. That sort of approach to deficit control failed for more reasons than we can specify here, but two are particularly noteworthy. First, the hostage game, the threatened sequester of discretionary spending, could not work; hardly anyone was willing to pull that trigger. Second, since neither side wanted to specify how to meet the targets, each dreamed the threatened sequester would force the other side to give in, and any agreement on appropriations could be vitiated by a later sequester, there was no incentive for anyone to do anything until the very last moment.

The simple lesson is, it is much easier to design rules to prevent action, as in BEA, than to force it, as in GRH. But there are two possible elaborations.

First, the sequester could be redesigned as something that could be allowed to happen. In other words, make the sequester a fall-back position, so Congress and the president would be agreeing not on a threat but on a package of automatic deficit-reductions if certain targets were not met. Mr. Panetta's proposal in 1992 is an example of such an approach. Under this arrangement, Congress would adopt a standby set of deficit reductions in advance. These reductions could be across the board or distributed among programs according to the priorities established by Congress. The important thing is that they would be expressly voted on by Congress. We are not saying that those measures are politically likely, just that any set of automatic deficit reductions should be debated and adopted as if those cuts in particular will occur.

Second, a targeting process could be designed in a way that made honest proposals more likely. The only way to do that is to put the onus on the president. A



process could set a standard for the deficit, to be triggered by a report from CBO. If CBO reported that the deficit would be too high, the president would be required to submit a proposal to reduce the deficit by a fixed amount, say \$40 billion, in the first year, with savings to be no less than that amount plus inflation and interest savings in the outyears. CBO would report on the president's compliance. If he complied, that proposal would be "fast-tracked" through the legislative process. It would be guaranteed a vote as proposed in each chamber.

Neither of these suggestions follows the Gramm-Rudman notion of forcing congressional action. The first is itself action: the adoption of a serious backup deficit-reduction plan, to be triggered if necessary. The second admits that Congress is much more likely to act if the president leads. If Congress votes down the president's plan without replacing it, its members will get far more blame than if there is no presidential proposal at all.

Under current circumstances in the Senate we cannot recommend eliminating the extraordinary majorities that have been built into BEA rules as a way to prevent action that would increase the deficit. If necessary those procedures can be overridden by a presidential declaration of an emergency; if President Clinton wants to do so, he and his party should take the political credit or blame.

Neither separately nor together will the measures proposed here solve the nation's deficit problems. But all are based on a realistic appraisal of the experience of the last two decades.

Increasing Presidential Power    Aside from modifications to the BEA/GRH structure, the major current proposals to reduce the deficit through process reform involve increasing the president's power to override Congress' decisions, through measures such as a line-item veto and enhanced rescissions.

We are not quite sure why Congress would want to talk about these matters. President Clinton mentioned them in his campaign, but most executive candidates do. These items are significant only in terms of publicity and controversy, not their likely effect on the deficit. Even some of the most respected conservative commentators have condemned the item veto. It would clearly increase the president's power. Yet it would apply only to the small part of the budget subject to annual appropriations. No president in the last twelve years suggested using it for a credible amount of money. And experience in the states shows that a governor can use an item veto as a weapon in negotiating for spending he wants and the legislature does not.

An enhanced rescission is guilty of everything of which the line-item veto has been accused and more. But we would support an expedited rescission process if it were carefully designed.

The current rescission system allows Congress simply to avoid even voting on a presidential proposal. It also allows delay that seems unnecessary. Any rescission that the president proposes is something that already passed and thus, by definition, is already familiar to the appropriations committees. Rescissions ought to be guaranteed review by the appropriators and then a report to the floor of the House within, say, 25 legislative days, with a week after for the Senate.

Serious issues remain as to how such rescissions would be processed. Congress cannot allow the president simply to set its agenda, for instance by sending up fifty separate rescissions every two weeks, each being allowed a separate vote. Congress also should be allowed to substitute its own cuts for the president's. An expedited rescission process therefore must include limits on how often the president can submit rescissions (for example, three times a year), and rules as to how they would be processed in committee, on the floor and in conference. This will require careful

drafting.

The Budget Resolution and the Budget Committees This committee may hear

proposals to strengthen the Congress for deficit reduction by strengthening the budget committees. You may also hear claims that Congress would do better on the deficit if you abolished the entire budget process.

We are not sure what difference the budget process makes for deficit reduction. Clearly it is not sufficient. Just as clearly, if Congress and the president agree on both totals and details, the process is not necessary. But the latter condition is extremely rare.

The budget resolution at a minimum does two things:

(1) It provides reconciliation instructions and allows committees to claim that Congress as a whole has demanded action, thus giving them cover for taking unpopular actions. Even when the process has been driven by the substantive committees rather than the budget committees, the former have appreciated this cover.

(2) It sets targets for overall spending and especially a 302(a) figure for the appropriations committees. Those committees must have some cap in order to function; they justify restraint by saying they are constrained within an externally derived total. At one time they used the president's budget as their benchmark, but that became impossible when President Nixon and Congress sharply disagreed on both totals and priorities. One of the budget resolution's functions is to allow Congress, if it disagrees with the president, to enunciate its own targets.

It is hard to see how either of these functions could be performed without the budget resolution. But we also should be aware of what the resolution cannot do:

(1) It cannot enforce honesty in budgeting. When the president fudges the numbers, Congress gets nothing but blame for being honest. Even if it does more to

reduce the deficit, it can look like it does less. That is why resolutions have not in fact been more honest than presidential proposals, and why Congress gave OMB the power to estimate the economy under GRH-2 and BEA.

(2) It cannot create agreement where there is none. Fiscal conservatives have hoped that a vote on totals, separate from details, would provide cover for later constraint on the details of programs. In practice, Congress and the president have not allowed supposed targets from the budget resolution to interfere with the underlying process by which they set goals as to totals, look at the consequences for the details, and adjust both to each other.

We believe that for deficit-reduction purposes alone there is little reason to either strengthen or abolish the budget process and committees. But there are strong reasons to alter another aspect of the process, the application of reconciliation.

One issue is the honesty of the reconciliation process. As it now operates, the process permits false or contrived savings to be substituted for real ones. It greatly overstates the amount of deficit reduction that has been achieved and misleads Americans, especially in programs such as Medicare, into fearing that valued programs are being destroyed. If Congress can demand honesty in the president's budget, it should demand no less from its own. Truly independent scorekeeping rules must be devised to protect Congress — and the president — against the strong temptation to cook the books.

Another issue is whether annually appropriated programs should be subject to reconciliation. They were in 1981, but that was viewed as an egregious violation of the boundary between authorizing and appropriating. Supposedly those programs could be eliminated, if Congress wished, in the appropriations round. Since then, reconciliation has been confined to entitlements and revenues.



We believe that is a mistake. The fact is, elimination of entire programs by the appropriations committees is extremely rare. For the appropriators to abolish a government function that has been created by legislation would be, in fact, a serious violation of current norms as to the functions of authorizing and appropriating. If an entire agency is to be eliminated the authorizers should do it. Put another way, which is more of a "violation" of authorizers' authority: to be ordered by reconciliation instructions to find savings, possibly including abolishing an annually appropriated program, or to have the appropriators abolish it without the authorizers having a chance to deliberate? The answer is obvious, and explains why the appropriators rarely do so.

We believe elimination or rationalization of discretionary programs, as opposed to management of routine financing needs, is legitimately a function of the authorizers. Therefore, reconciliation should be extended, according to decisions in each year's budget process and by the legislative committees, to programs that are annually appropriated.

When applied to discretionary authorizations, reconciliation should aim at terminating low priority programs. It does not suffice to merely claim savings by lowering "authorized to be appropriated" levels somewhat below current amounts. That approach was tried in 1981, but within just a few years most of the claimed savings had evaporated.

#### The Effects of Budgeting on Congress

In many ways the effects of the budget process within Congress are felt more personally than its effects on policy or the deficit. Its most visible parts, the appropriations and budget committees, are continually blamed for legislators' varied frustrations — though, given appropriations committees' power over matters of interest

to colleagues, they are criticized far more quietly.

Many of these criticisms are misguided. Authorizations — and for that matter appropriations — have been delayed far less by the failures of — and floor time consumed by — the budget process than by the underlying policy divisions of the past twelve years. The tension between authorizers and appropriators is inherent in the two roles. If the appropriators have gained power at the authorizers' expense, that has far more to do with failures of the authorization process than with imperialism by the appropriators.

But however one allocates blame, Congress has a serious problem. For over a decade members of most authorizing committees have felt they had little opportunity for constructive action. Since most members are not on the committees that have been active — Appropriations, the revenue committees, and in the House, Energy and Commerce, this situation has led to immense frustration and hard feelings.

We are not persuaded that the budget process established by the 1974 Act is the at the root of the problems with budgeting in Congress. It is more likely that the problems in the budget process are symptomatic of wider difficulties Congress has had writing authorization, appropriation, and tax bills. As such, our discussion will attempt to address changes in the budget process in this wider context.

The task as we see it is not to punish committees, be they appropriators, fiscal policy makers, or others — but to energize the authorizing committees. To do so we must first realize how much of their problems has been due to the budget process and how much due to other factors.

Authorizers and Budgeting Legislators like to solve public problems. To do so they often need to spend money. But for over a decade, there has been hardly any new money to spend. At the very least, the budget process then becomes the bearer of

bad news. It sets constraints that would exist anyway, but are given visible form by 302(a) allocations or reconciliation instructions.

In this situation only two committees have had elbow room. The revenue committees had it because, even if they were raising taxes or cutting spending, along the way they could provide exceptions ("transition rules") or even pay for a program expansion with a little larger cut to something they did not like anyway. Their jurisdiction is so expansive that they could find funding, at least for small favors. The appropriators had the same advantage. They had much less new money to spend than in the 1970s, but among their vast array of details and programs they had much more opportunity than other committees to do a little good for the nation or districts here and there.

Both appropriators and the revenue committees had one other advantage: their legislation, either appropriations bills or the crucial components of reconciliation, had to pass. Even if the nation's agenda is to cut the budget, some sort of budget still is necessary.

During budget constraint, therefore, the units with most budgeting authority are far more active than all others. No process can change that: the same dynamic occurred in the executive branch as well.

But the authorizers had another, equally severe problem: divided government. It was especially serious from 1981-86, when committees that wished to move legislation had to overcome not only the division between the House and the president, but in many cases extreme disagreements between the partisans who chaired the House and Senate committees.

Partisan division greatly exacerbated the budget-driven dynamic that drove action towards the appropriations arena. A president or senator who was quite willing

to torpedo an authorization could not afford to do the same with appropriations. Every one of those bills (except maybe D.C.) has something that the president, and virtually every legislator, wants. The strategic situation was exemplified on housing matters. Senator Garn and the Reagan administration had no real need to settle with the House Banking committee. But they had to deal with the HUD/Independent Agencies subcommittee, because that bill included NASA, NSF, and the VA. The Banking committee ended up having to work through the appropriators in order to preserve or alter "their" programs.

The same pattern recurred in many policy areas. Even with a united Congress, it was important where one authorizing committee had problems (e.g. the foreign aid authorization). At the same time many bills, such as the Department of Justice authorization, could involve issues that authorizing chairmen and party leaders did not want debated on the floor. It has often seemed easier to continue the programs through appropriations. The latter committees, in turn, have tried to satisfy authorizing chairmen enough so that the latter will basically defend the appropriation on the floor; this allows appropriators to fend off accusations of a power grab, and is not necessarily a bad thing for authorization chairs. The tendency to work through appropriations has of course been exacerbated in the limited but important areas where the Senate authorizing chairman is also the Appropriations subcommittee chair.

A number of these conditions (embarrassing issues, the greater likelihood of passing appropriations and the dual roles of Senate chairmen) are not new. Neither is tension between appropriators and authorizers. The tension also is inherently prone to differences in perception. If appropriators make concessions in conference, authorizers often believe they would not have had to — even if they would. If appropriators are asked to do ten things, do eight and add two of their own, appropriators will feel they



have been very cooperative. Authorizers will blame appropriators for the two rejections and two additions; the eight agreements are simply what the appropriators should have done.

Therefore complaints on both sides, from authorizers that they are being overrun, and from appropriators that they are being importuned endlessly by ungrateful and hypocritical authorizers, are both true but not as bad as they sound. But the situation has been particularly bad of late, and the question is how it might be improved.

Responses may be divided into three categories: those that are occurring naturally, rules to adjust the boundary between authorizers and appropriators, and rules to improve authorizing without affecting the appropriations process.

The election of President Clinton, in and of itself, should redress much of the recent imbalance. President Clinton wants to pass legislation. His agenda requires the kind of hearings and deliberation that only authorizers, not appropriators, can provide. Authorizers will have much more opportunity to act in the next four years than in the previous twelve, even as the deficit persists. The President has made clear, for example, that even as he strives to reduce the deficit he wants to use some new revenues to fund new programs.

There have been many proposals to adjust Congress' rules and "protect" authorizers from appropriators. Almost all of these proposals are in the House, where jurisdiction matters more. We believe the recent proposal to give House authorizers a role in appropriations conferences involving legislation or appropriations bills is a sensible one, and we regret it was not adopted. We would like to see it given a chance.

We do believe, however, that authorizations can be facilitated by other means. Concerns about floor time are overstated, but measures to give them more time on the

floor should be considered. For example, more time should be reserved early in the Congress for action on authorizations, and the committees encouraged to act within that time frame. One approach would be to reverse the current understanding, which aims to move appropriations as early as possible in the House. We recognize that it would put pressure on the appropriators, but think having authorizations through the House beforehand also helps the appropriators by limiting use of the point of order against unauthorized programs. Therefore, we recommend that appropriations not be allowed to come to the House floor before June 1.

This proposal only makes sense if authorizers do, in fact, use the time provided. The Speaker's Working Group in the House should allocate the time and make clear to authorizers that if they do not use it, they lose it. It should also be clear that if they do not use it this year, they should not expect to get it as easily next year.

The Speaker's Working Group also must encourage authorizers to be realistic about their workloads. The 1960s and 1970s saw a move to annual authorizations. It is impossible to process that much legislation annually, and so an attempt to put pressure on appropriators with annual votes, and therefore increase authorizers' power, backfired. When authorizers could not pass their bills, they had even less claim for allegiance from appropriators (except in the special case of the DOD authorization, which does pass). The Speaker's Working Group should accelerate the present return to multi-year authorizations, by favoring committees that do so in the allocation of floor time. The Joint Committee should consider rules changes that would either ban annual authorizations or give preference to multiyear authorizations.

These measures will not eliminate the tension between authorizers and appropriators. But they will at least make clear that, if the appropriators are acting on programs that have not been reauthorized, that is not because the authorizers were

prevented by the budget schedule from acting.

### Conclusion

Nobody should believe that process changes will eliminate the deficit. Nor should anyone imagine that internal tensions that have existed for two hundred years can be eliminated. Finally, all considerations of budget process reforms must include the president.

We have included the president in our discussions of both the deficit and internal congressional relations. If we have not offered any panaceas, our proposals also are hardly business as usual. The House Appropriations Committee, for sure, will want access to the floor before June 1. The leadership may not want the responsibility for scheduling that we propose, and authorizers may object to the restrictions on annual authorizations. Forcing the president to propose honest deficit reductions is not exactly in his political interest, and declaring that any sequester Congress enacts should be one it would accept occurring is contrary to the history of Gramm-Rudman. Expedited rescission raises many questions of power and implementation, and extending reconciliation to discretionary programs should meet howls of protest from both appropriators and authorizers.

Nevertheless, we believe all of these measures are justified, and all will do some good.

### Bicameral Relations

Tensions between the House and Senate are a normal part of the legislative process, though there have been times when inter-chamber disagreements have reached proportions significant enough to endanger Congress' ability to function. While we are not in such a period at the moment, there are a number of festering problems

in inter-chamber relations which the Joint Committee might profitably address. While it may not be possible to offer specific recommendations to change congressional practices in all cases, open discussion of them could help restore some sense of good faith among the members.

The most frequent complaints come from the House and are directed at aspects of Senate rules which delay or frustrate action on bills, which add legislative provisions which the House would rather not have considered, or which disrupt patterns of power distribution and internal negotiation in the House in House-Senate conferences. While some of these complaints are amply justified, others represent the common practice of blaming differences in rules rather than focusing on more basic issues such as the inherent constitutional differences between the two chambers, or blaming the Senate for practices also followed by the House.

Since the House is a body tightly controlled by rules designed to force it to reach conclusions on legislation, there is an inherent conflict between it and a Senate designed to slow the pace of action, prevent it altogether, or guarantee to small groups of senators or to individuals the power to block consideration or to conduct recorded votes.

Committee Structure The Senate's inability to pass important legislation which could pass in the House, such as foreign aid bills, has tended to disrupt the structure of the House committee system and the influence of individual panels. Committee work is far more significant in the House than in the Senate, and House members perceive changes in the status and power of their committees as damaging to their own reputations and influence.

The House floor schedule is geared toward consideration of measures reported from authorizing committees, but Senate inaction has helped to increase the power of



appropriations subcommittees which are called on to resolve these matters through "must pass" appropriations bills with the authorizers in a subordinate negotiating role and excluded from formal participation in conferences.

In the 103rd Congress, the House Democratic Caucus changed its rules to reduce the status of the Foreign Affairs Committee, which had difficulty attracting members to serve on it in part because legislation originating there had little prospect of becoming law. While this demotion had a great deal to do with the public's insistence in the 1992 elections on priority attention to domestic problems, there was also a latent concern that, even in a period of unified government, the Senate might still be unable to produce and secure passage of foreign policy legislation.

Nongermane Amendments The Senate's loose rules on germaneness, and lax enforcement of restrictions barring substantive policy riders on appropriations bills, are the source of the greatest friction. House members view these Senate practices as an attempt to manipulate the legislative process to its advantage and frequently have sought to restore what they regard as a balance by changing the House's own rules either to allow separate House votes on issues originating in the Senate, or to prevent them, as the case may be. On the other hand, House members sometimes will cheer the Senate on, especially in the case of issues which the House would like to see addressed but would rather not have a separate vote on itself.

The House has long had a rule which allows any member to demand a separate vote on any non-germane provision of the Senate included in a conference report. The rule was originally passed to prevent House conferees from accepting provisions the House has never voted on and would be unable to reach in a single up-or-down vote on a conference report. But there has been an increasing tendency on the part of the Rules Committee, at the behest of House conferees and sometimes the leadership, to

waive this right because it might threaten further delay and ultimate passage of legislation after a difficult conference negotiation.

However, moving in the opposite direction in the 103rd Congress, the House has moved to undermine the power of appropriations conferees to reach and promote agreements by giving the chairs of authorizing committees the right to make a preferential motion to insist on disagreement to a legislative provision. While this proposal also served the purpose of restoring some of the status lost by authorizers over the years, it potentially places obstacles in the way of votes on the conferees' recommendations, and undermines the basic principle that motions related to conferences are intended to bring the two chambers together, not perpetuate their division.

The House's objections to the presence of legislative provisions on appropriations bills must also be weighed in the context of frequent House use of the practice when it suits that body's purposes. With the help of waivers from the Rules Committee, and with the connivance of authorizing committees and the leadership, House appropriators include legislative provisions while simultaneously blaming the Senate for making the practice necessary by failing to pass authorizing bills into law.

The Senate can claim some movement toward limiting the presence of non-germane or irrelevant provisions in legislation. The Byrd rule on reconciliation, which does not exist in the House, tends to restrict the presence of items not geared toward deficit reduction. The Senate also employs supermajorities which prevent waivers of the Budget Act, a process which can be accomplished by simple majority in the House with the help of the Rules Committee.

Supermajorities Supermajorities are another aspect of fundamental differences between the chambers. The Senate's various 60 vote requirements for

budget act waivers, overriding certain rulings of the chair, and for other purposes, do not violate the body's basic functions as emphasizing minority rights.

The House, by contrast, has no supermajority requirements in its rules, except where attempts may be made to suspend the normal operation of the rules. House members regard the Senate supermajority requirements, which sometimes manifest themselves as issues in House-Senate conferences on spending, as forcing the House to compromise more than it would like in order to create a consensus allowing 60 members of the Senate to vote for the conference agreement.

Joint Committees There have been proposals to rely on increased use of joint committees to deal with substantive issues and as a means of promoting improved bicameral relations. Recommendations have been made for a joint budget committee, presumably to expedite consideration of budget resolutions; and a joint committee on intelligence, intended, say proponents, to reduce the likelihood of leaks of sensitive materials by reducing the number of members with access. The majority in the House has tended to regard such proposals as intended to reduce their degree of control over these issues.

Indeed, the pattern in Congress as a whole has been to reduce reliance on joint entities for any substantive work. Since the abolition of the Joint Committee on Atomic Energy in the late 1970's, no joint committee has had legislative jurisdiction, and those that remain either perform studies (joint economic), serve as staff repositories (joint taxation) or as a convenience to perform administrative functions common to Congress as a whole (joint printing, joint library).

We are skeptical of the utility of joint committees for ongoing legislative and oversight responsibilities. Competition between the chambers and their committees can energize congressional oversight and foster legislative creativity. And separate

committees have more credibility in their respective chambers and thus are in a better position to facilitate more constructive and predictable involvement by the full House and Senate in their respective domains.

As for current joint committees, major change may well be in order. The key functions of some joint committees, like Joint Tax, might be better handled with reorganization into joint staff operations rather than committees that require significant investments by lawmakers in memberships and time. The Joint Tax Committee, for example, might be converted into a Congressional Tax Office akin to the Congressional Budget Office. The same process could be used for the Joint Committees on Library and Printing — indeed, you should consider, more broadly, whether the whole printing function should remain in the legislative branch or be more appropriately parcelled out by giving executive branch printing to the executive. At the same time, we recommend creation of a Joint Intelligence staff, creating a joint core of professionals to handle intelligence matters for the two committees, as a better way of solving some of the problems that have led to calls for the creation of a Joint Intelligence Committee.

Conference Size The House practice of multiple referrals of legislation has led to the creation of large House delegations to bicameral conferences, with House conferees subdivided in numerous ways and often appointed with a mandate to consider a narrow range of provisions, or sometimes only a single issue. On mammoth bills such as budget reconciliation, it is impossible for conferees to all meet in the same room, and conference agreements are not so much negotiated as assembled from a massive paper flow coordinated by staff out of the numerous sub-groupings.

The practice has worked to the disadvantage of both bodies. The House lacks a coordinated strategy, as powerful committee chairs sometimes work at cross-purposes



with each other and sometimes require leadership intervention to negotiate seriously. This problem, Speaker Foley has said, contributed to his decision to ask the House for authority to add and remove House conferees where necessary to move conferences toward resolution of disagreements. The Senate, with a small number of conferees facing a mob from the other body, is uncertain exactly who to negotiate with and who can deliver agreements sufficient to gather a majority of House conferees' signatures on a conference report.

Conclusion We are not here to place blame. Neither chamber is pure in this process. Neither chamber can amend its rules in ways which dramatically affect the status and power of the other body. Attempts to do so can be destructive and can backfire on Congress as a whole.

For example, the recent amendments to House rules which give the chairs of authorizing committees the right to make a preferential motion to insist on disagreement to a legislative provision on an appropriations bill, while intended to raise the profile of authorizing committees in this phase of the appropriations process and perhaps discourage the Senate from adding such provisions, is likely to have no effect on the Senate and a far more obvious result of disrupting the ability of conferees to negotiate.

Similar objections apply to proposals which would automatically reject provisions of one chamber if they violate a rule of the other, or which require a supermajority in the House for passage of non-germane Senate amendments.

We are disturbed by these proposals and would urge the Joint Committee to expressly address major issues in bicameral relations, rather than allow each chamber to attempt to deal with them individually and yield potentially destructive results.

More specifically, based on our previous discussion, we recommend:

(1) that Senate floor procedures be changed in order to more strictly enforce rules regarding offering of non-germane amendments;

(2) that the House Speaker reduce the size and organizational complexity of his conference appointments;

(3) that the House enact an equivalent of the Byrd rule on reconciliation;

(4) that joint leadership meetings coordinate a schedule for both chambers which encourages House members and Senators to remain in Washington at the same-time, to ensure better communication among members and joint availability for scheduling of conferences.

### Staff

Allegations of overstaffing and ballooning congressional staff growth may be the most common contemporary complaints about Congress. Our primary goal, and yours, should not be simply to cut, but to find ways to improve Congress' ability to perform its basic functions and institutional responsibilities as efficiently as possible. With regard to staff specifically, it follows that the goal of any reform effort should not be simply to cut staff in order to save money, or to respond to public and press criticism, but rather to find ways to allocate and use staff more effectively and to encourage professionalism so that Congress can better represent constituents and deal with the country's policy problems.

Before getting to our recommendations to reform the current system, we want to address some of the widespread misconceptions about staff and staff growth that have been repeated incessantly in recent years. Congressional staffs have grown substantially since World War II, and particularly in the past quarter century. But nearly every account suggests that explosive growth has continued unabated through

the last decade and more.

This is not true. Growth in staff sizes and numbers has had distinct ebbs and flows; most of staff growth occurred from the late 1960s through the mid-1970s. This growth coincided with a major reform movement that decentralized power and resources in Congress and was part of an overall effort to modernize the institution, to help it cope with its growing workload, and to help it establish its own independent base of information, knowledge, expertise and analytical capability — at a time when the White House was dramatically increasing its own staff to challenge basic congressional prerogatives.

But staff growth did not continue unabated. It leveled off in the late 1970s — before the Reagan era — and has not changed materially since. Today congressional staff sizes, personal and committee, are roughly equal to what they were ten years ago.

In spite of this apparent leveling off, the calls persist for drastic, across-the-board cuts. We urge you not to succumb to this pressure. The more efficiently run, already over-burdened, sectors of the Congress would be hardest hit by such a measure. This would certainly not bring about greater institutional efficiency and would most likely increase staff turnover which would further weaken the institution. In addition, such a cut, while it would probably reduce the overall cost of operating Congress, would make Congress more dependent on the executive branch and on interest groups for information and policy expertise. A large across-the-board cut in staff would be a pennywise, pound-foolish approach.

Reductions and adjustments in committee staff should be made in conjunction with consolidation and restructuring of the committee system. For example, as the number of subcommittees are reduced and as select and minor committees are merged with major committees, substantial reductions in staff can be achieved. This targeted

approach makes much more sense than the meat-ax reform advocated by many critics.

With regard to members' personal staffs, we believe the total number of full-time personal staff allotted to House members should be reduced from eighteen to fifteen. While we recognize that this represents only a minor change from the current practice, as most members presently employ between 15 and 16 personal staffers, it is a change in the right direction; it will provide some economies, and it will encourage members to think through the allocation of their resources and responsibilities. At the same time, we recommend that the office staff budget allotments be left at their current level, to give members more flexibility to hire and retain professional staff members. Along those same lines, existing restrictions on the ways members can allocate their office resources should be eliminated, to allow members more management flexibility. In our meetings with current Hill staffers many voiced their frustration with the lack of professionalism they see among young staffers today. This is due in large part to the current system which encourages turnover and offers few incentives for career service.

In order to compensate for the reductions in personal staff, the House should create an Office of Congressional Staff Services to assist members in handling bulk mail and ancillary casework loads. This office would be designed not to usurp the mail-writing and processing functions of individual members' offices, but to assist when crunch times come, or when members get deluged with bulk mail. Your panel should try to find other places in both chambers where pooled or collective staff arrangements could reduce wasteful overlap of staff, without striking at the heart of the duties and responsibilities of the individual members.

Finally, both the House and the Senate should create more formalized hiring standards akin to those in the executive branch, and create a formal job-training

program for congressional staff.

The issues surrounding congressional staffs go beyond personal and committee staffs to encompass also the staffs of the congressional support agencies. These agencies, the General Accounting Office (GAO), the Congressional Budget Office (CBO), the Office of Technology Assessment (OTA), and the Congressional Research Service (CRS), are an integral part of Congress and have contributed to its strength and independence, as well as its policy and institutional knowledge and expertise. They also need to be looked at carefully.

The General Accounting Office, the largest support agency, is also the most beleaguered of the four. It is probably not surprising that twelve years of divided government have made GAO a target of criticism, much of it coming from a minority party in Congress that believes the agency has been used frequently by the majority for its own purposes.

While we do not believe that the disproportionate influence on GAO's agenda by the majority party is itself a big problem, we do feel that the process by which GAO interacts with members to establish its agenda needs rethinking. GAO is often criticized by disgruntled lawmakers for tailoring studies to individual requesters. If the agency were able to better inform all of Congress about its activities and how it sets its agenda, the perception that it is in alliance with specific members would no doubt be less.

GAO, in our judgment, has no institutional bias toward Democrats, but it does show a sensitivity toward whomever solicits its help. The agency needs to develop a more consultative and open process for defining problems and issuing reports. The problem, we want to emphasize, is not simply GAO's. Rather, Congress has not created any institutional mechanism for regular and systematic tracking or



coordination of GAO activities that can reach all its members, and the members themselves, including many who regularly criticize the agency, have shown no particular interest in finding out all that GAO is doing, and why it is doing so. In the absence of movement in this direction, both by the agency and by Congress, we can expect more, and more bitter criticism, with a partisan edge.

Another area of controversy surrounding GAO involves the use of agency detailees by congressional committees and subcommittees. GAO assigns roughly 100 detailees per year to committees. The majority usually end up on one of three House committees: Appropriations, Energy & Commerce, or Government Operations. In many cases these detailees are viewed as additional staff to the committee and subcommittee chairs, and therefore as putting GAO in support of the majority's agenda. We recommend that the Joint Committee seriously consider eliminating concerns about partisanship, and incidentally increasing GAO's focus on auditing rather than policy prescription, by restricting detailees to the process followed by the House Appropriations Surveys and Investigations staff. These GAO detailees are used for investigations that are approved by both the committee chair and ranking minority members, to produce studies that are not published. This approach allows Congress to use GAO's special skills without any question of partisan bias.

The three remaining agencies have generated nowhere near the controversy of GAO — in part, because none have GAO's resources or power. While CBO has sometimes been charged with bias, this is not generally viewed as a significant problem. CBO's biggest strength lies in its neutrality; the organization rarely makes policy recommendations and focuses instead on providing balanced analysis.

OTA is similar to CBO in its efforts to avoid taking firm stands on policy issues. The agency is considered highly credible by members of both parties and is well-

regarded for its technical competence. The OTA model is an interesting one. A relatively small permanent staff is supplemented by the use of outside experts on panels on a case-by-case basis. This model might well be adopted by GAO for some of its functions, thereby allowing a significant reduction in GAO's size.

CRS is probably the least controversial of the four agencies. But its role too should be considered by the Joint Committee. Its predecessor, the Legislative Reference Service, was set up in significant part to act as a substitute for large personal, committee and subcommittee staffs, by providing a central core of trained professionals available to all members. The LRS was professionalized further when it was transformed into CRS, and its professional cadre was expanded and enhanced — at the same time that other staffs, in offices, in committees and subcommittees, and in other support agencies, were sharply expanded as well. Sorting out the functions provided by a central body like CRS from those provided by the myriad of other staff entities in Congress should be done periodically; this task is directly within the purview of the Joint Committee. It may be that the OTA model could be adapted in part to CRS as well, allowing some studies to be done in whole or part by creating panels of outside experts, with measured reductions over time in permanent staff.

There is one other area of CRS's work that the Joint Committee should deal with. The highly trained and competent professionals at CRS are not employed to carry out constituency service functions, answering inquiries from school children or voters that can and should be handled by individual members' offices. If Congress decides to create an Office of Congressional Staff Services to help out members when office staffs are reduced in size, that office can be equipped to handle such requests. CRS's professionals should spend their time doing the substantive work necessary to Congress' legislative functions.

In looking at the support agencies some observers have recommended aggregate reforms. Recommendations range from consolidating some or all of the agencies' functions and streamlining congressional oversight of them, to beefing up their resources and manpower to allow them to do their jobs more effectively. We feel a better approach would involve looking at each agency individually, and a more regular examination of each agency's functions for Congress, and its resources, is in order.

Nonetheless, there is one general issue concerning the support agencies that you might profitably consider. Under present arrangements, there are few limits on congressional offices requesting services from the support agencies. The natural attitude among members and staff is, "Why not ask for a GAO report or CRS study? All it takes is a phone call, letter or meeting." Of course, the costs to GAO, CRS and the public — often in the tens of thousands of dollars — are not then considered. There are no costs to members or committees associated with their requests which might promote an efficient allocation of agency resources. Free goods tend to be overused; their costs outweigh their institutional benefits. You should explore the use of vouchers, an internal accounting system, and public disclosure to reduce some of the inefficiencies inherent in the current process.

Our conclusions and recommendations concerning congressional staff are based upon preliminary findings from our project. We have commissioned additional research in this area, and we will forward to the Joint Committee the fruits of that research when available in the spring.

### **Relations Between the Parties**

Congress today suffers from an intense and destructive partisanship, especially in the House, that discredits the institution in the eyes of the public and diminishes

the quality of life within it. This partisanship is the result of broad forces in American politics; it will not easily be cooled by structural adjustments within Congress.

Several critical developments in American politics, including the mobilization of blacks and the rise of the Republican party in the South, have contributed to an ideological consolidation within each of the parties and increasing conflict between them. This ideological sorting of the parties has reduced the incidence of cross-party coalitions in committees and on the floor, thereby diminishing opportunities for minority party members to leave an imprint on legislation.

Having served a 40-year sentence as the "permanent" minority, the longest period in American history, House Republicans have increasingly adopted a confrontational stance, seeking to highlight their differences with the Democrats and vigorously protest the heavy-handed rule of the majority. The long period of divided government brought its own frustrations to Congressional Democrats, who found their majority status of limited legislative use in the face of Republican presidents with very different agendas.

As a majoritarian institution with its rules dominated by a permanent majority party, the House was ripe for the corrosive partisanship that subsequently developed. The Senate, on the other hand, with its tradition of unlimited debate and its experience with alternating party control in the 1980s, has fewer partisan tensions. Yet even the individualistic Senate is feeling the effects of the heightened ideological conflict between the parties.

The return of unified party government may reshape the context within which this bitter partisanship flourishes, but we see no signs of deescalation in their "War of Roses." We urged in our initial report that the House minority be given control of the motion to recommit (which we discussed earlier under floor procedure) and one-third of

the investigative staff on committees. However, developments since the election have done nothing to suggest that minority rights will win greater protection in an era of unified government. Despite the slightly increased size of the GOP minority in the House, the trend continues of restricting the minority's ability to influence floor activity, disrupt the majority's plans, and enunciate opposing views.

No significant proposals were offered in the Democratic Caucus to enhance minority rights. Except for minor provisions supported by the minority dealing with oversight activities of the new House Administration subcommittee created by last year's administrative reforms, all the movement was in the other direction. The amendments receiving the most attention were seen by the minority as attacks on its prerogatives.

The proposal for restricting time for special orders and allowing recognition for speeches, in effect, only with the permission of the leadership, was intended to restrict the minority's development of special orders as a part of its agenda-setting process. It also struck at the basic representational rights of all members to speak for their constituents. The Speaker wisely retreated on this idea on the last day the Caucus met in December and created instead an informal bipartisan group to devise reforms in special orders. We hope the House moves in the direction of promoting Oxford-Union style debates on policy issues while retaining the right of individual members to express their views.

Party relations were also damaged by the proposal to allow delegates to vote in the Committee of the Whole. While the votes of these non-members could be canceled out by the full House if they threatened to affect the disposition of an issue, the fact that all five were members of the Democratic Caucus fueled the minority's belief that giving a vote to the District of Columbia, the Commonwealth of Puerto Rico and three



territories was motivated not by concerns over representation and participation but by efforts to reverse the minority's 10-seat election gain. Appearances were not helped by the fact that the leadership successfully put down opposition within the Democratic Caucus from members wary of the constitutional implications of the proposal.

At the committee level, the minority lost a useful tool for delaying committee action when the House is considering amendments in the Committee of the Whole. Committee chairs proposed adoption of an amendment which allows all committees to meet at any time, except during joint sessions and meetings of the Congress. This gave the chairs greater flexibility on scheduling committee meetings, but also increased the likelihood of interruptions as members answered calls to vote on the floor.

We were also disappointed by the majority's failure to recognize the minority's legitimate claims to a fairer share of the budget for committee staffing. The House should adopt a rule guaranteeing the minority one-third of the investigative staff, as it already is for one-third of the statutory staff. In a period of unified government, the minority is even more dependent on its staff for helping develop ideas and draft legislative proposals.

We have little counsel to offer the Joint Committee beyond the specific recommendations we have already made. A stronger, more confident House Democratic party might be persuaded to take the extra step to allow the minority its rightful voice in the process. A Democratic president seeking support for his proposals on the other side of the aisle might take the edge off partisan conflict and encourage less confrontational tactics among Republicans and more constructive bargaining between the parties. And we hope a commitment to congressional renewal will strengthen institutional loyalties among both Democrats and Republicans.

### Congress and the Executive

The return of unified party government to Washington has raised expectations of an end to gridlock and the ushering in of an era of constructive partnership between the executive and legislative branches. There can be no doubt that divided government contributed mightily to the poisonous relations between the branches and that its disappearance removes a major obstacle to inter-branch cooperation.

But it would be foolish to overlook the tension between the branches that was built into our constitutional system or to underestimate the institutional legacy of two decades of chronic conflict. The habits of assertiveness and involvement practiced in both legislative and executive settings will not be easily curbed even under unified government. And the major source of conflict — widespread disagreement over what policy choices should be made in tough budgetary times — remains very much with us.

This is not the time or place for us to handicap President Clinton's prospects for working effectively with Congress, or to offer our advice on strategy and tactics for the new administration. We would simply underscore the point that the ability of Congress to improve its operations and public reputation rests in large part upon its success in working constructively with the president.

During the period from the Civil War through the Vietnam conflict, the general thrust of change in inter-branch relations involved an expanded role for the federal government, accompanied by broad congressional delegations of discretionary authority to the executive branch. Since the early 1970s, however, the opposite has been occurring. Steadily increasing reassertions of congressional authority have led to executive branch charges of "micromanagement."

These charges cannot be dismissed as mere inter-branch rivalry. The effects of micromanagement by Congress are in fact real and measurable, taking the form of

thousands of administrative directives, regulations and reporting requirements written into committee reports, and, increasingly, into legislation. Often Congress, so preoccupied with getting its way, overlooks the very real managerial concerns of agency administrators. Sometimes this can be necessary, and even beneficial, but more often than not it saps agency morale, exacerbates inter-branch tensions, and prevents senior officials from performing their ultimate mission, actually implementing policy and administering programs.

Of course, responsibility for the problems is not borne exclusively by Congress. At the direction of White House counsel C. Boyden Gray, the executive on many occasions deliberately ignored or defied congressional intent, frequently exercising a kind of executive veto of legislative provisions. Gray and the White House were encouraged by the 1984 Supreme Court Chevron decision, which provided a loose standard giving the executive great discretion to interpret legislative statutes; they took that discretion, in our opinion, much too far.

The Supreme Court has added to the problems of micromanagement and executive-legislative tension in other ways. The Chadha decision removed one of the major vehicles the legislative and executive branches used to work out their balance of responsibilities, giving Congress the peace of mind to extend more open-ended authority to the executive. The legislative veto had no doubt been abused, and a one-house veto was dubious, but by eliminating all legislative vetoes, the Court only encouraged Congress to find other, more subterranean vehicles to micromanage the regulatory process.

Executive-legislative relations should not be understood as a zero-sum game. It is in the interest of both the president and Congress to seek to strengthen each branch's comparative advantages. For the system to work at its best, Congress must

deliberate about the major legislative policy options and the president must lead. Neither branch can do its own job well if it tries to do everything, without respecting the other branch's role, or the limits of its own capabilities. Unified government creates opportunities for changing legislative-executive branch relations in ways that could not have occurred in an atmosphere of partisan suspicion.

Structural reforms cannot themselves provide an atmosphere of mutual respect or regular and meaningful communications between the branches. But in some areas, changes can help facilitate the process. Our goals are to provide better communication when policies are formulated and priorities set; to facilitate a climate of mutual trust, so that legislative delegation and executive action can be appropriately coordinated; and to refine the definition of consultation to fit the prerogatives and goals of both branches.

To accomplish these goals, we have several suggestions:

Legislative Intent First, Congress needs to identify better ways to define legislative intent and to guide action. Making this sort of change requires self-discipline by both the president and Congress. First, the president and Congress should reach a broad agreement that administrative regulations must flow directly from the premises of a statute, as Congress determines them, not merely from a loose standard, as suggested in Chevron, that gives wide deference to the executive's interpretation of legislative meaning. A part of that understanding should be a clearer definition by Congress of what counts as legislative intent, including the language of a statute and some additional material, such as committee reports that are explicitly approved by a committee and ratified in some fashion by Congress. Parliamentarians should work out cost-effective ways of including some legislative history explicitly in the bill approval process, so that intent can be more clearly established for the

executive as well as the courts.

Obviously, where Congress can make its intent clear in the language of a statute it should, but that is not always feasible or desirable. Writing more detail into laws can mean more rigid micromanagement than leaving statutes as lean and concise as possible. We have no illusions that regularizing or codifying legislative intent in this fashion would be easy, or that it would be easy even to get both branches to agree on the criteria. The law-making process is unavoidably fluid and messy; it is tough enough to pass anything, much less achieve separate votes or understandings on reports or colloquies. It requires substantial self-discipline for Congress to try to think through every exigency to build a clearcut record of intent. Still, this period of united government provides an opportunity for key people from both executive and legislative branches to work out new ground rules on legislative intent and administrative interpretation; the opportunity should be seized.

Executive Branch Testimony      Second, a system needs to be developed to coordinate executive officials' testimony to Congress. Over several years, top executive officials, especially cabinet officers, have spent an increasing amount of their time and energy testifying in front of an increasing array of committees and subcommittees. Congress' ability to make laws and oversee their implementation, and its responsibility to guard against executive wrongdoing, all require the presence of top executive branch officials before the legislature. But that presence should be limited to those committees and subcommittees that have official jurisdiction over the particular departments, or those where a compelling justification for requiring a Cabinet officer or other top official can be offered.

In recent years, though, a much wider range of committees and subcommittees have demanded appearances by top officials, sometimes to publicize their issues and



efforts, sometimes simply for ego purposes. Each appearance by a Cabinet officer requires a substantial investment in time and staff effort by the department. The legitimate need and right of congressional panels to bring in executive officials needs to be balanced against the efficient use of executive officials' time.

We recommend that the Speaker's Working Group on Policy Development and the Senate Democratic Policy Committee act as arbiters in this process. Where Cabinet and other top officials feel that an appearance is unnecessary, superfluous, repetitive or an unwarranted strain on their resources, they should be able to appeal to the Speaker's Working Group or the Policy Committee to defer or cancel a committee or subcommittee demand to testify.

Consultation Third, the Speaker's Working Group on Policy Development and the Senate Democratic Policy Committee should meet regularly with members of the Cabinet and top White House staff to exchange information on future priorities and pending action. The level of communications between president and Congress depends first and foremost on the willingness of the president and top congressional leaders to meet together and be open and forthcoming with one another. No structural reform can create that willingness if it does not exist. But creating a mechanism to bring top congressional and executive officials together on a regular basis can increase the possibility that each branch will be aware of what the other is doing, and decrease the possibility of clashes and misunderstanding.

Consultation between the president and Congress is a key to legislative-executive relations. Consultation, however, cannot simply mean prompt notification of an executive action, especially if it is after the fact. Consultation should mean, wherever possible, early and frequent discussion of possible actions, and a dialogue over the pros, cons and possible outcomes — all done before executive actions occur.

These regular meetings can help; they might also obviate the need for some of the formal testimony demanded of Cabinet officials by Congress.

Collaboration on National Security Fourth, special initiatives should be taken to facilitate more productive relations between the branches in the area of national security policy. The end of the Cold War and the return of unified party government offer a real opportunity to reduce the chronic conflict that has often characterized interbranch relations since the Vietnam War.

To begin that effort, the President must accept and publicly acknowledge a partnership between the branches in the making of foreign policy, with a legitimate role for Congress. That collaboration requires consultation with Congress before action is taken by the executive. We believe the best overall strategy is to seek to substitute early congressional involvement in the setting of broad policy goals for a reliance on detailed, restrictive, often punitive measures after the fact.

Pursuing this strategy suggests establishing and institutionalizing a joint consultative group on national security policy; amending the War Powers Act by substituting an explicit consultation mechanism for the provision requiring the withdrawal of troops as a consequence of congressional inaction; encouraging presidents to seek prior congressional authorization for the use of force except in a true emergency to repel an attack; and revamping foreign assistance programs by replacing the myriad of restrictions and earmarks with a limited set of broad policy objectives.

In addition, we believe the Joint Committee should look favorably on structural changes within Congress (in the committee system and the budget process) that acknowledge and give primacy to the new foreign policy issues that will increasingly occupy the attention and energy of executive branch officials.

Budget Process Fifth, we believe the creation of an expedited rescission

process, and a move toward more multi-year budget agreements and authorizations, as discussed in our section on the budget process, would foster more productive executive-legislative relations. We suggested earlier that enhanced rescission authority, like a line-item veto, would be an unwise delegation of legislative powers to the executive. However, an expedited rescission process, which would guarantee the president a vote in Congress on rescission requests, would be a responsible compromise, striking a better balance between the branches. At the same time, Congress and the president should actively seek to strike multi-year budget agreements between the branches, that apply both statutory and moral pressure on lawmakers to maintain the agreements. The resulting stability and accompanying reduction in year-to-year partisan and programmatic tension would allow Congress to focus on other priorities than budget wars.

Similarly, wherever possible, Congress should move to multi-year authorizations. Making decisions that allow for long-term planning while reducing clutter on the House and Senate floors are highly desirable goals; multi-year authorizations move in that direction.

Executive-Legislative Dialogue Finally, we urge Congress to utilize innovative forms of dialogue between the branches. The normal form of dialogue between executive and legislative officials is in a congressional hearing, where executive officials sit at witness tables and are questioned by lawmakers sitting on the committee dais. Opening statements are followed by fragmentary questions, done without any real continuity or dialogue as members go from one line of questioning to another in five-minute segments.

The Clinton economic summit in December showed that there are other ways to have a dialogue on important policy issues. The President has indicated that he will

use that format, or variations of it, for other issue areas. While the economic summit focused on non-elected officials, there is no reason why the format cannot be used for dialogue between legislative and executive officials. Regular meetings between the Speaker's Working Group, the Senate Policy Committee and the Cabinet are one approach to inter-branch communications, and summits are another. We urge the Joint Committee, Congress and the White House to innovate and experiment with these and other ways to improve both communications and the deliberative process.

### **Congress and the Courts**

Judicial interpretation of statutes has become for courts an increasingly significant and time-consuming duty. Ultimately, when courts review a statute and pronounce what the legislature intended, they shape the content of the legislative work product. If this has always been true, the impact of courts on the legislative process has become more apparent recently as some within the judiciary have criticized Congress for the way it writes its laws and have advocated a more restrictive approach in interpreting statutes.

As Congress considers its role, several questions come to the fore: What should Congress know about the problems courts face as they seek to understand statutes? How can courts come to better understand the legislative process and legislative history? How can Congress better signal its meaning? What sort of institutional processes and mechanisms can be devised in the pursuit of these objectives? These questions have been raised and are being explored by the Governance Institute in its project on judicial-congressional relations, directed by our Brookings colleague, Robert A. Katzmann. We endorse and draw heavily upon that work here.

What is at stake ultimately is the integrity of the legislative process. To the

extent that courts have difficulty understanding the legislative process which they interpret or Congress does not provide courts with a clear sense of its meaning, then both branches have a problem in need of further attention.

Consider the following typical pattern: Congress passes a law; the statute becomes the subject of legal action. The court must interpret the meaning of the words of the statute, but the meaning is often unclear. As the judiciary delves into the legislative history — the basis upon which judges have traditionally sought to interpret statutory meaning — the court must first determine what constitutes legislative history and how to assess its various parts, including committee reports, floor debates, and votes. The court may at times be forced to delve into layers of rules and procedures on which it has little knowledge and experience.

Sometimes the legislative history may be virtually non-existent; in other instances, Congress may deliberately elect not to deal with difficult issues. Certainly one can point to numerous examples of a conscious strategy on the part of drafters to put contentious aspects of statutory meaning in committee reports as a way of obscuring controversy. However, it is also the case that legislation is often ambiguous because the problems confronted cannot be easily defined and Congress lacks the expertise to resolve them. That Congress does not foresee problems arising from the statutory scheme may not always be a failure of legislative will or precision; sometimes it is too much to expect Congress to foresee all manner of developments.

It is also true that in the instances when the text of a statute is clear, resorting to legislative history may be unnecessary. But if the courts simply stick to the statutory text as a rule, even when that text is ambiguous, without adequate understanding of the context in which legislation is considered, then arguably judges will have considerable discretion to interpret the statute, perhaps in ways Congress



did not intend. It is indeed ironic that some judges and legal scholars are not averse to consulting such extra-textual sources as the Federalist Papers and the records of the Constitutional Convention to better appreciate the context of the constitutional provisions which they interpret, even though they blithely deny the use of analogous materials when examining statutes.

What this means is that when Congress does not give explicit direction about its legislative intent, it not only creates added burdens for the courts, it also increases the risk that the judiciary will interpret statutes in ways the legislature did not intend. In the absence of mutual understanding, the quality of governance will inevitably suffer.

It is, of course, too much to expect that institutions will act with perfect knowledge. Given the complexities involved in legislating on certain issues, it is unrealistic to believe that the legislature and the judiciary can definitively address all the problems they face. But at the very least, each can strive to overcome tensions which prevent one from accurately assessing the processes and outcomes of the other.

On the congressional side of the equation, the task is to find ways to make the legislative history more authoritative, to find ways that Congress might more clearly signal its meaning, and to give direction as to how its work should be interpreted. As Robert Katzmann has observed, clarifying statutory meaning has at least three parts. The first, relating to drafting, is in some sense preventative; that is, it seeks to anticipate potential difficulties and to deal with them before a bill becomes law. The second component focuses on the materials that constitute legal history and is geared toward finding ways for Congress to signal more clearly its meaning. The third part involves developing routinized means for the courts to transmit their opinions to Congress, identifying problems for possible legislative consideration.

With respect to drafting, Congress could subject legislation to some central

scrutiny, applying accepted standards, much like some state legislatures do. A checklist of common problems developed by the House and Senate legal counsels' offices should be drawn upon by Members and their staffs to reduce judicial burdens and at the same time give clearer definition of legislative intent. Such a checklist, perhaps incorporated into the committee report, would focus legislators' attention on such matters as constitutional severability, civil statute of limitations, attorney's fees, private right of action, preemption, exhaustion of administrative remedies — all issues that, when not explicitly addressed in legislation, are often left to the courts for resolution. To further improve drafting, periodic seminars involving legislative counsel and judges would be useful for members and staff alike.

On the second element of improving statutory clarity through legislative history, there might be ways to more sharply define the purposes and most agreed-upon background of a piece of legislation. As part of this effort, Congress might explore the possibility of ranking the various elements of legislative history — committee reports, sponsor statements, floor colloquy, additional views, etc. — in some order of significance for signalling intent. Another means of clarifying intent might be for floor managers to agree which floor statements, colloquies, and insertions in the record should be given weight and indicate that such material, by expressed arrangement, is meant to be part of the authoritative legislative history.

With respect to the third element, statutory revision and inter-branch communication, Congress and the federal judiciary lag behind many states which have law revision commissions that provide for the orderly evaluation of statutes, bringing together representatives of all three branches. A practical example of how this might work is already underway. The Governance Institute, at the invitation of the judges of the U.S. Court of Appeals for the D.C. Circuit, and with the bipartisan support of both

the House and Senate leadership, helped design a system of collecting, sorting, and circulating statutory opinions of that court relevant to congressional committees for legislative consideration. Findings indicate that in most cases, Congress makes no effort to clarify legislation identified by the judiciary as having problems for interpretation, at least in part because the responsible committees are unaware of the relevant court decisions. There is also evidence to suggest that the judiciary may not know of activities on the congressional side which have bearing on the court's work. To the extent that Congress can resolve problems in statutes identified by the courts, not only will the legislature's intent be better served, but also the judicial caseload may be somewhat reduced.

The core problems of congressional-judicial relations are longstanding, and no one should have any illusions about the ease with which they can be addressed. Some issues may prove to be intractable. But the legislative branch is not without means to rise to the challenges it faces. The prospect of a Court that might seek to impose upon the Congress its own rules of statutory construction could leave the legislature with little choice but to respond.

This area has little public visibility and few members are deeply interested in it. But congressional-judicial relations are crucial to the future role and power of Congress. The Joint Committee needs to keep this subject in the forefront of its deliberations and recommendations.

### **Ethics and the Public Reputation of Congress**

To large numbers of Americans, congressional ethics is an oxymoron. The focus on ethical violations, by individuals and institution-wide, including a series of highly publicized, often televised, hearings and investigations in both House and Senate, have

created that unfortunate and inaccurate public judgment. But accurate or not, the public view is important, and it clearly is influenced by the way in which Congress fulfills its Constitutional mandate to judge its own members and employees.

Ethics Process For several decades, both the House and Senate have used permanent committees as the primary vehicle for considering allegations of wrongdoing or violations of ethical standards by lawmakers. These committees have generally consisted of hard-working, fair-minded and highly respected lawmakers. But they have raised many problems with the ethics process in Congress.

Committees that consist of current lawmakers have an innate conflict-of-interest when judging their colleagues. That interest may be partisan or individual. It may be positive or negative — that is, some may have an interest in protecting a colleague from serious penalty, and others, in seeing a colleague embarrassed, wounded or removed from office. Partisan margins, positions on committees or chairmanships, outcomes of individual issues — all may be changed by whether a colleague is reprimanded, censured or expelled. No matter what the outcome of an investigation, or what recommendation is made by an ethics panel to the full chamber, it can be clouded by these questions — by the perception, if not the reality, of conflict of interest. One consequence is the deterioration of public confidence in Congress.

At the same time, for Congress to take away from their core policy-making tasks some of its best and most gifted lawmakers — representing, for the Senate, a meaningful percentage of the whole body — means that Congress weakens its own capacity to do its major job. The Packwood case, now upon us, is a good example. The next couple of months will have the Senate rightfully immersed in the tasks of confirming top administration appointees and dealing with the major legislative priorities of the president and the country. To have six of its members required to

suspend most of their efforts in these areas to investigate the allegations against Senator Packwood greatly weakens the capacity of the Senate to do its confirming and legislating jobs.

It is not easy to find an appropriate alternative to the existing process. The Constitution does specify that Congress should police itself. And, even where it meets the Constitutional requirement, an outside element in the ethics process worries lawmakers, who rightfully are sensitive to the needs and demands of a uniquely and inherently political body. Having outsiders judge their fates and reputations is at minimum dangerous.

But if change is necessary, as we believe it is, there are reasonable and appropriate ways to strike a better balance than the current system. In the past, we have advocated House and Senate ethics committees that consist of former members, who, by virtue of some distance from the process do not have the same problems of inherent conflict judging members of Congress as sitting members, and yet who have a clear understanding of the unique nature and character of a legislature. These committees would not pass final judgment on ethics questions for Congress, but rather would investigate, hold hearings and make recommendations to be acted on by the House or Senate as a whole.

This solution was not perfect. Finding enough former members with the time, energy, resources and inclination to serve as full-time panelists, while avoiding any conflicts-of-interest among them, could easily prove to be a nettlesome problem.

To deal with these problems, we have come up with another suggestion. Instead of having a fixed committee, with a set of specified members serving for specific terms, the House and Senate should each designate pools consisting of a large number of former members, along with others whose experience and background make



them appropriate to judge ethics issues involving members of Congress and their employees. When a question emerges of some sensitivity and importance about an individual, or even about establishing a broad policy or specific rule to govern an area of conduct where no appropriate policy exists, the Majority and Minority Leaders would each designate five members from the pool to sit as an ad hoc panel, which would then forward its recommendations to the internal ethics committees, and then, if necessary, to the House or Senate floors for consideration and votes.

These ad hoc panels could hire staffs where appropriate, or draw on existing staffs in the chambers for clerical or technical assistance. They would obviate the need for any independent counsels, whose necessity has been governed by the public and press perception of internal conflict of interest, but whose existence creates problems of its own — including the individual ambitions of the independent counsels themselves.

Few changes to be considered by the Joint Committee would be as timely, or do as much to improve the public perception of Congress, as a constructive revision of the ethics process.

Applying Federal Laws to Congress Adding to the widespread public perception that unethical behavior is more the rule than the exception in Congress is the belief that it exempts itself from the same laws it expects the rest of the country to abide by. The Congress has customarily exempted itself from federal laws such as Occupational Safety and Health, Fair Labor Standards, Freedom of Information Act, etc., on various grounds, emphasizing separation of powers intrusions if the executive branch were allowed to enforce such laws. There are also practical questions as to the relevance of certain laws, such as Freedom of Information, in the congressional context, since Congress does not execute the laws, receives correspondence from constituents that is intended to be private, and lacks a staff bureaucracy in committees

and other offices to respond to requests for documents.

Nonetheless, it is obvious that the exemptions have gone too far and gone on too long, in the process damaging the credibility of the institution itself and the laws it passes. This is also an issue of fairness for congressional employees. Staff deserve additional rights and protections if Congress is to do away with most vestiges of the "Last Plantation" mentality which still persists today. The constitutional arguments have become an excuse to deny protection to personnel who work on Capitol Hill. Within the constraints of the separation of powers, there are ways for Congress to address this issue in a manner which provides real reform and protections for its personnel.

We believe the Joint Committee should recommend the creation of an independent agency within the legislative branch, subsuming the existing entities in the Senate and House established to police fair employment practices, that would be charged with ensuring that Congress applies to itself comparable rules and penalties for laws it writes for others. It should have minimal direct involvement by current lawmakers. This new Office of Congressional Compliance should also be charged with reporting on the applicability, or lack thereof, of all appropriate laws to Congress and recommending necessary changes in statutes to bring Congress into line with public expectations.

Campaign Finance No effort to deal with the ethical concerns about Congress, or to revitalize its deliberative and policymaking capabilities, can possibly succeed without a major overhaul of the campaign finance system. In our initial report we laid out a critique of the present system (the money chase, excessive reliance on "interested" money, and the competitive disadvantage of challengers) and principles and guidelines for crafting a new system.

We understand that other committees in the House and Senate are expected to prepare legislation for consideration later this year, absolving the Joint Committee of any immediate responsibility for dealing with this difficult issue. We simply want to remind you that your larger objective of improving the operation and public reputation of Congress cannot possibly succeed without a satisfactory resolution of the campaign finance problem.

Public Understanding of Congress This committee needs no reminder of the abysmally low level of confidence the public has in Congress. Indeed growing public hostility toward Congress is largely responsible for all of us being here today. Increasing the public's respect for and appreciation of Congress will require most critically improvements in the big picture: sustained economic growth whose benefits are enjoyed by all members of society and cooperation between the president and Congress on the major problems that we confront. The public reputation of Congress will also be enhanced by steps designed to restore its institutional integrity (campaign finance, ethics and lobbying reform) and to strengthen its agenda-setting and deliberative capacities.

Therefore, it would be a mistake for Congress to see its crisis of legitimacy as largely a public relations problem, and design its response accordingly. On the other hand, the widespread public ignorance of Congress — the mismatch between the visceral, largely uninformed reaction of many Americans to the national legislature and its real strengths and weaknesses — is very disconcerting. We have done a terrible job providing the public with the context and detailed information it needs to understand the constitutional responsibilities and institutional practices of Congress.

We believe that Congress can itself take several useful steps to begin to remedy this situation; but others outside the institution, including most importantly the

media, must also change their practices. Some of the recommendations we have already made — especially those that enhance the ability of Congress to deliberate and debate — will help public understanding. But other steps are needed as well.

Congressional leaders must take a more active role informing the public about their institution and shaping opinion. Individual members should seek to educate the public about the inner workings of the institution and the important trade-offs, compromises and sacrifices which must be part of any effective lawmaking process. Instead of bashing the institutions for their own political advantage back home — a pattern known far and wide as running for Congress by running against it — members should take seriously their responsibility to inform their constituents and strengthen their institution. Congress has been weakened in recent years by the decline in the number of its members who are committed to the institution as the bedrock of American democracy.

But no effort to enhance public understanding of Congress will succeed without changes in the way the media covers Congress. A few months from now we will convene a conference on "Congress, the Media and the Public," where we will present new research on media coverage of Congress (commissioned expressly for our Renewing Congress Project) and explore ways of improving that coverage. We will forward our findings and recommendations to the Joint Committee on this important subject as soon as they are available.

### **Conclusion**

We hope our discussion of the strengths and weaknesses of Congress and our suggestions for institutional change will prove helpful to the Joint Committee as you pursue your very important mission. As we indicated in our testimony, we would be

happy to make available to you the individual studies prepared under the auspices of our Renewing Congress project. Our work will continue over the coming months and we stand ready to provide whatever additional assistance we can.

We are motivated primarily by a belief that Congress must be strengthened, as a policymaking body and as the most crucial representative institution in our democracy. Both features of Congress have been weakened in recent years, more a result of broad social and political forces than developments inside the legislature.

No amount of structural change within Congress, however radical, will guarantee cooperation between the branches or restore public confidence in the first branch of government. But a serious effort of self-examination and organizational renewal can help. We wish you well.



**Let Congress be Congress: A Program for Reform**

Testimony of

David M. Mason

Director, U.S. Congress Assessment Project

The Heritage Foundation

to the

Joint Committee on the Organization of the Congress

February 16, 1993

Congressional reform means something different to almost everyone. This suggests that in coming up with a reform plan to cure Congress's ills you first must agree on a diagnosis -- what is the problem you are trying to solve? -- for surely the wrong medicine can make the patient worse off. In this respect, while the functional categories adopted by the committee are useful and perhaps necessary as a way of organizing your work, taking the Chinese menu approach of 'one from column a, two from column b' will be insufficient without a clear overarching idea about what you want to achieve. Why is it important to reduce the number of committees and rationalize their jurisdictions, to streamline the budget process, to reduce the size of the staff, to introduce a more reliable schedule? Are these disparate problems which individually will admit of small or large efficiencies and reforms, or is something larger at stake? And are these problems related?

First, let me suggest a context for your efforts. That context is term limits. While I understand that most of you are opposed to term limits, significant majorities of the American people support them, and this should be a signal to you that the American people see large, persistent and systemic problems with Congress. Frankly, the work of this committee may offer the best opportunity for Congress to avoid the imposition of term limits, but you can do so only if the reforms you craft are of a scope and direction consistent with the sentiment represented by support for term limits. You must avoid treating term limits and other expressions of public disapproval of Congress as merely a public relations problem, arguing that if every citizen could spend a week with you they would understand. In fact, this is the implication of the committee's formulation of "public understanding".

I would go so far as to suggest that the committee drop "public understanding" from the list of areas in which reforms will be proposed. Rather than treating public dissatisfaction as a problem to be fixed, perhaps by C-SPAN seminars or civic education, you should treat public opinions and judgments as useful evidence of the problems in Congress. Rather than asking spin meisters how to improve public perceptions of Congress, you should be asking why the public is unhappy and what they are unhappy about. Rather than assuming that public dissatisfaction springs from a lack of knowledge about Congress and public affairs -- a profoundly undemocratic attitude -- you should consider the possibility that the average citizen knows more than you think about what is wrong in Washington, and that it is the view from here that needs to be better informed. The public's understanding is not a problem, but a weighty body of evidence and opinion that you should explore and apply in your deliberations.

I would argue that there is one big problem with Congress today which is at the root of this public dissatisfaction, and which is the source of your colleagues' unrest as well. If you

agree, you will have a useful standard with which to measure the many specific reform proposals which have been suggested. The problem is that the U.S. Congress is a legislature that has, by and large, stopped legislating. Now, of course, you pass bills all the time, and complaints about a lack of more laws may sound odd coming from a conservative. But there are two senses in which it is accurate to say that Congress doesn't legislate enough. First is the degree to which your time, and even more that off your staff, is spent on non-legislative activities: on casework, in public relations efforts, in writing and lobbying executive agencies, on investigations and oversight that have no ultimate legislative purpose.

The second, and perhaps even more important failure in legislating has to do with the laws you do pass. Take, for example, Congress' recent approach to transportation. The 1991 highway bill was a monument to pork and Congressional self-promotion. One Senator's father had a boat ramp named after him. Localities in Tennessee, Ohio and Wisconsin got new bicycle paths, and the Staten Island Ferry hauled in an extra \$2.7 million. At least two Representatives brought home over a quarter of a billion dollars in bacon for their individual Congressional districts. The bill was a monument to complexity as well: 298 pages of small print text with a 186-page report adding more details. Compare this to the bill that created the interstate highway system. The Federal Aid Highway Act of 1956 was a mere 32 pages. The section describing how the interstate highways would be funded and built took up only 11 pages. No state, county or locality was mentioned in the bill. Yet the 1956 Act revolutionized America's transportation network. There is little danger that anyone will make a similar judgment about the 1991 transportation bill over thirty-five years from now: \$150 billion will have been spent for little return.

In a similar example, the New York Times last week pointed out that the original Clean Air Act was a page and a half long while the latest renewal was 313 pages. The issues may have become more complex over time, but are the differences sufficient to justify a bill two hundred times as long as the original?

When Congress is not enmeshed in detail, it tends to be lost in generality. The Americans With Disabilities Act (ADA), for instance, requires "reasonable accommodations" for disabled workers as long as there is no "undue hardship." But Congress refused to define these terms more explicitly. As a result, regulatory agencies and the courts will make the real law. Effectively, Congress is turning over the legislative chores, and power, to someone else. The recent controversy over jail terms for wetlands violators presents a similar problem. The statute in question nowhere refers to wetlands. Whatever your opinion as to the gravity of environmental crimes, we should be able to agree that the legislature and not regulatory agencies should decide what crimes are serious enough to deserve jail terms.

The 1991 Highway Bill represented not a law, but a series of administrative decisions. The ADA embodies the best of intentions with very few guidelines as to how those wishes are to be accomplished. Real legislation combines precise meaning with general applicability. The rule of law means nothing if the law is so detailed that it applies differently in every place and circumstance, or so vague that one cannot know beforehand what constitutes a violation. Knowing what the law says and having it apply equally are fundamental rights, rights Congress violates when pork and pious wishes become model enactments. While it is obvious that American citizens lose in this role reversal, Congress loses most of all. For what is gained in detail and warm feelings is lost in the ability to act decisively on major issues.

The high proportion of time Congress devotes to non-legislative activities is likewise counter-productive. Micromanaging executive agencies ensnares Congress in iron triangles with bureaucrats and special interest groups, robbing lawmakers of objectivity. Making a wholesale business of constituent service is helpful at election time, but necessarily diverts attention from larger issues, even creating the perverse incentive to ignore systemic problems. Pursuing disputes through investigatory hearings and independent counsels poisons public debate, making it more difficult to explore and settle legitimate policy differences. The result is that Congressmen have become elected superbureaucrats: ombudsmen, micromanagers and prosecutors.

To achieve real reform, Congress will have to stop doing a lot of what it does today. This is not to say that the President should run the show, quite the opposite. Today Congress gives sweeping grants of legislative power to executive agencies and then attempts to micromanage what those agencies do. A sharper distinction between the legislative and executive roles is needed. Give the President complete control over the discretionary actions of his agencies and Congress will be far less willing to hand over its legislative powers. The power of executive agencies would be reined in and legislative decisions would be made on Capitol Hill.

The result would not be a continuation of gridlock, but its elimination. Real legislation avoids gridlock because there are clear winners and losers. A bill passes or it doesn't; it is signed or vetoed; if vetoed, that action is overruled or it is not. Today's laws often merely initiate extended regulatory struggles, leaving factions in a standoff, and producing increasingly vitriolic and pointless debates.

Let me give one example of how the problem of not legislating relates to one of the other problems often cited: that of a dearth of serious debate. The best recent example of a genuine and important debate was the Senate's consideration of the resolution authorizing the use of force in the war with Iraq. The reason that the debate was informative and productive was that there was a real

issue to be decided and there was a fundamental, yes-or-no choice. If more of Congress's activities were framed this way: a fundamental choice, absent too many details, with some finality to the decision, debates would be more meaningful. If you want productive debate, it must be tied directly to legislative outcomes. Members come to the floor to vote, they show up in committees for mark-ups. In this respect, nothing could be less useful than set-piece, so-called Oxford style debates with no connection to the legislative process.

In considering what reforms will produce a better functioning Congress, then, we have a clear yardstick: do structural reforms encourage legislation or discourage non-legislative activity? Do reforms in the legislative process foster clear decisions on big picture issues? Several reforms clearly meet these tests:

**Term Limits.** Legislators are interested in pork because it helps them get reelected. They are interested in administrative details because long tenure promotes narrow specialization. Term limits would end congressional careerism, and encouraging attention to larger legislative issues. By changing the understanding of the legislator's role, term limits are probably the most effective single reform for Congress.

With a career Congress, voters face a dilemma: they do not like paying taxes to Washington and getting them back in the form of pork and entitlements, but as long as the system is rigged, it makes sense to vote for the incumbent in order to maximize your own take. Congressmen face a dilemma, too: take the easy road to reelection or face the often difficult choices of balancing local and national interests. Take away the career mindset and both representatives and voters can make choices based on philosophy and the merits of each case.

Ideally, legislators in a democracy are not professionals, but, as Olympic athletes of yore, skilled amateurs. They must be somewhat detached from governing and far more attached than they are today to the communities they represent. They must feel a stake in returning, not only to where they once lived, but to what they once did for a living. Even if term limits result only in a cadre of politicians rotating amongst state, local and federal offices, limiting tenure in Washington would help maintain links between legislators and the communities they represent.

**Session Limits.** If you are opposed to term limits, you should take seriously the call of Senator Dole for a six month session limit, and examine other steps which will allow you to return to the ideal of citizen legislators rather than full time politicians. The number of days spent in Washington may be more damaging than the number of years. Congressmen should return, even if for only a few months each year, to their own communities and occupations, not as weekend tourists, but as colleagues of their



constituents. By replacing the existing three-day work week with a five-day schedule, Congress could compress their year-round sessions into six months of honest work. A definite end to sessions will also communicate to Congressmen that they are representatives rather than managers of the permanent bureaucracy. Reversing the tide of ever longer sessions will require reform of conflict of interest laws, but the goal is a worthy one.

**Balanced Budget Amendment.** A constitutional amendment is the only way to bring discipline to Congressional spending. The 1974 Budget Act, which governs Congressional budget decisions, has proven to be a machine to increase spending rather than a tool to control it. The Budget Act consists primarily of internal congressional rules, rather than statutes, so the few restrictions that do exist can be violated at will. Most notably, the annual Congressional Budget Resolution is not a law (and thus cannot be vetoed or signed by the President), making the budget process Congress's most outrageous non-legislative exercise.

A constitutional amendment would force Congress to come up with a procedure that works. It is by no means impossible to design a system which either automatically limits spending or forces Congress to make difficult decisions. In fact, two different versions of Gramm-Rudman (which altered the 1974 Budget Act) were quite effective; but when the limits began to pinch, Congress just changed the rules. The most flawed of those changes, made in the 1990 budget deal, reinforced the "current services baseline" system of automatic spending increases: No votes are required. Indeed, any limitation in the growth of these bureaucratic wish lists is advertised as a spending "cut".

Most of the arguments against a balanced budget amendment just don't wash. We are told, for instance, that the ratification and phase-in period simply postpones action to balance the budget. This argument might have some merit if Congress were making progress in that direction, but aside from Gramm-Rudman nothing has worked even to limit deficit growth in the last twenty years. Others predict dire consequences when Congress is forced to choose between huge tax increases and draconian spending cuts. This is a congressional version of the "Washington Monument ploy": politically popular programs are the first offered for cuts. Voters do not object to a choice between spending cuts and tax increases. It is Congressmen, who would have to make such decisions and then be held responsible, who find the alternatives daunting. The overwhelming majority of states have balanced budget requirements. From time to time, those requirements have forced unpleasant choices, but nowhere has it proven impossible to live with such budget discipline.

Whatever reforms of the budget process you choose to make, you should take care that they are legislative in nature. Enforcement procedures under a balanced budget amendment, for instance, should require votes and real legislation rather than automatic devices,

which encourage legislative stalemate. If a failsafe mechanism is necessary, it should be in the President's hands, which would provide a strong inducement for Congress to legislate rather than abdicate.

**Enhance the President's role in setting the budget.** Today the President submits a budget to Congress and has no more to say about overall taxing and spending levels. Making the Concurrent Budget Resolution, which sets those targets, subject to presidential approval or veto would probably result in lower overall spending and taxation levels. The president's broader constituency lends itself more to those broad concerns than to interest in individual programs. Further, setting spending targets by statute would make it far more difficult for Congress to circumvent the limits. Doing so would require a change in the law, signalling the public the budget was about to be busted, and giving the president an opportunity to veto the increases. Coupled with a statutory budget resolution, the president's authority to withhold ("impound") spending in excess of legally approved levels should be restored. These reforms could follow or precede a balanced budget amendment.

**Staff cuts.** As a panacea for Congressional ills, staff cuts rank just behind term limits. Reducing the size of the staff would have productive effects in just about every area: reducing incumbent electoral advantages; trimming the length and complexity of legislation (and encouraging legislators to read it); cutting the volume of midnight deals in conference sessions and committee reports; limiting improper interference with regulatory and other executive branch functions. In short, getting rid of some of the help will force the elected officials to do their job: to legislate.

To make a real difference the cuts need to be large. Congress should match President Clinton's 25% staff cut with a similar cut of its own. Ultimately, staff could even be cut in half. House Republicans have proposed a 50% cut in committee staff: A palatable proposal for them since they are dramatically shortchanged in committee staff allocations. Committee aides, however, represent only 10 percent of all Congressional employees. Cutting the House numbers in half would reduce the overall congressional payroll a paltry 3 percent.

Besides, committee staffers actually help with legislation part of the time. A Congressman's commitment to cutting staff can be judged by his willingness to cut staffs under his own control. Not that proponents of staff cuts should be required to cut unilaterally, but Congressmen's personal staff should be cut along with committee and support staff. The objective of cutting staff is to force Congress to reassess how it operates and change its behavior. Anything less than 25% across-the-board won't be enough to change the way Congressmen conduct casework or micromanage executive agencies. Even larger cuts would improve the operations

of Congress by streamlining and forcing Congress to concentrate more on its essential legislative tasks.

**Line-item veto.** A Presidential line-item veto would help limit spending, though it is far less helpful in this regard than a balanced budget amendment. (Unfortunately Presidents are little more willing than Congress to take the heat for necessary but unpleasant spending cuts.) More importantly, an item veto would allow the President to limit unreasonable Congressional encroachments on executive authority, and would enable him to excise pork and other crooked deals concocted by committee chairmen, or even staffers, against the will of the Congressional majority. This would greatly limit the degree to which conference committees, for instance, could be abused to approve unpopular provisions in unaccountable secrecy. While the founding fathers did not write an item veto into the constitution, it is obvious that they did not contemplate the huge and complex omnibus bills that have become so common today. Again, state experience is instructive. The vast majority of governors have an item veto, and its presence has not irreparably harmed the balance of power between the executive and the legislature.

**Congressional coverage.** Congress exempts itself from most civil rights, worker safety and environmental laws. The attitude of being above the law corrupts the legislative process at its heart. Many incumbents argue that Congress must be exempt from the law so as not to fall under the control of the executive or judicial branches. This makes no more sense than saying that Congress should not be allowed to pass legislation affecting judges or cabinet members, lest those officials become subservient to the legislature. Separation of powers means that Congress makes the laws, not that it is exempt from them. In fact, the separation of powers doctrine dictates that Congress keep its hands off the administration and adjudication of laws. More narrowly, Congressmen cite the constitution's protection against their being questioned outside of Congress for their speech and debate there, but Congressional speeches are rarely the issue. Members and employees are required to present subpoenas to the House or Senate. If Congress believes an investigation is political, it can interpose its institutional prerogatives at that point, rather than declaring before the fact that Congressmen are above the law. There may also be a case for different treatment of employees with legislative responsibilities (a definite minority of all Hill workers). The treatment of political appointees in the executive branch is an appropriate model here. Those appointees are covered by all the laws applying to other executive branch employees, but they can nonetheless be fired, with no practical appeal, for policy reasons or violations of confidence.

In most cases, of course, there is no constitutional issue in applying the law to Congress. It is difficult to see, for instance what constitutional damage would be inflicted by OSHA inspectors

visiting Congressional offices. Congressman John Boehner of Ohio invited just such an inspection of his office on a voluntary basis in the summer of 1992, uncovering numerous violations of worker safety standards. In fact, most of the OSHA "violations" were clearly insignificant, proving Boehner's point that making Congress subject to the laws it approves would provoke more attention to the problems a well-intentioned law may present. More importantly, making Congress live under the laws it passes would drive home a point that too many legislators have forgotten: they are not our rulers, but our servants.

Congress should adopt a blanket congressional coverage statute, and House and Senate rules should require all legislation to cover Congress unless there is a specific recorded vote to the contrary. If Congress insists on maintaining its own enforcement offices (as some executive branch agencies are allowed to do), then it should use enforcement standards identical to those used in other government agencies, to provide an objective standard for measuring Congressional compliance. Court appeals must be allowed, and most especially, Congressmen should not be permitted to escape jury trials. With a jury, Congress is not subject to another branch of government, but to citizens. Businesses fear unpredictable verdicts in lawsuits as much as the specific requirements of regulatory legislation. It would be productive for Congress to contemplate the same possibility when crafting vague laws.

**Freedom of Information.** If there is a single law which most needs be applied to Congress it is the Freedom of Information Act. Congress gets away with many abuses simply because no one can find out about them. If Congressmen and their staffs were required to keep adequate records and to make them available to the public, many Congressional abuses would go away overnight, and questionable behavior would be subject to the informed judgement of voters.

**Casework.** Helping constituents solve problems with the government is Congress's number one occupation. But if constituents are continually being shafted, Congress should fix the systemic problems, rather than patching up faulty operations with ad hoc intervention. Congressmen should get out of the casework business. Large reductions in staff, especially in personal staffs, are probably the only way to achieve this goal. For those inevitable cases when paperwork is lost, or constituents confused, an ombudsman system, either within agencies or as an arm of Congress, would be far preferable to the current arrangement. Favors are fraud, because you're paying. Short of getting out, Congress could come clean about casework. All manner of scandalous political favors are covered by the little-old-lady-with-the-lost-check ploy. Congressmen should be required to report all correspondence and phone calls to executive agencies periodically in the Congressional Record. If it is all just honest casework, Congressmen should be proud. If they're not, we can only assume they have something to hide. If Congress won't take this step itself, then the President





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should order executive agencies to log and report Congressional contacts as public matters.

**Fair and open procedures.** One of the reasons Congress has difficulty acting on important issues is that its committees, dominated by special interests, are allowed to bottle up popular legislation. When bills do reach the floor in the House, controversial amendments are often blocked. Through a variety of ruses Members are able to stake out positions on both sides of an issue, or even to vote one way while doing the opposite. House and Senate rules should be revised to produce a more orderly, fair and open process. This can start with setting the legislative agenda.

Congressmen and constituents are frustrated when important legislation gets bogged down. Giving new scheduling powers to a few House and Senate leaders, as some have suggested, would only open the door to new abuses. A better system would give every Member a voice, and stake, in setting an agenda. This could be accomplished by allowing a brief debate on legislation as soon as it is introduced, a system similar to that followed in early Congresses. Simple bills were approved, silly ones disposed of, and complex ones sent to a committee. (The Senate retains vestiges of this procedure: If a Senator objects to referral of a bill to committee it is placed on the calendar immediately.)

Reviving this procedure would allow the entire House and Senate to determine an agenda openly. In referring a bill, Members could instruct committees to complete action within a given time or indicate in a general way how a bill should be amended. This system would reduce the clutter of Congressional calendars, and cut down on frivolous proposals, as sponsors would be loathe to endure their colleagues' taunts for introducing pointless legislation. The scope and complexity of bills would probably be reduced since simpler measures would be more likely to be approved. If debating every bill seems like too much, Congress might allow the procedure to be invoked selectively by the leadership of either party or by a significant number of Members.

The House Rules Committee, which sets ground rules for debating bills on the House floor, too frequently bends procedures in favor of the Democrat majority, especially by blocking politically contentious amendments. While some variation in rules may be necessary, a few standard procedures should be developed to cover most bills. Changes in those standard rules should require a supermajority (60 percent or more) vote. Absent an agenda reform like that described above, significant minorities within the House should be given a greater voice in what legislation is considered. Currently, action can be forced on legislation if a majority of the House (normally 218 Members) signs a "discharge petition." Since the petition is kept secret, however, voters have a hard time keeping score: Representatives can claim to support legislation while refusing to do what is necessary to get it enacted. Discharge



petitions should be made public, and the threshold for forcing action should be lowered. There is no reason why the House should not consider legislation supported by, say, a third of its Members.

Finally, Congressional rules should be revised to make votes more meaningful. The House practice of approving legislation or amendments without votes ("deeming") should be prohibited. Conference committees, which are intended to work out differences between House and Senate versions of bills, should not be allowed to practice stealth legislation by deleting provisions both bodies have agreed to or adding new material that neither had approved.

**Cutting committees.** Much mischief in pork and micromanagement is conducted by committees independent of the knowledge or will of the majority of Members. Several previous reforms have limited committee and subcommittee numbers, but like weeds, they require periodic clearing. The rearrangement of committee jurisdiction is relatively unimportant as long as the numbers are significantly reduced, perhaps by half or more. This would help untangle schedules, and the resulting broader jurisdictions would likely produce a more integrated approach to lawmaking. Congressmen would then sit on one or two committees rather than three of four, and on two or three subcommittees rather than half a dozen. Among other salutary effects, this would increase the attention Congressmen give to each committee position, and therefore reduce the role staff plays.

**Term limits for chairmen.** Members who are concerned about the concentration of power in the hands of fewer chairmen might consider imposing term limits on those chairmen as suggested by Oklahoma Democratic Congressman Dave McCurdy. While McCurdy's proposal is in the form of a change in House rules, it is the Republican and Democratic caucuses in each body that designate chairmen and ranking members. There is no reason why those party organizations should not move on their own to limit the tenure of committee chairmen, as House Republicans have already done, or even of all committee members. Over the course of six years or so even the most ambitious chairman should be able to advance a legislative agenda. Allowing Members to remain chairmen, or senior committee members, for long periods simply allows the natural process of forging common links with bureaucrats and interest groups to overtake the detachment necessary to the legislative role.

The point off all these reforms is not to reduce the power of Congress, much less to replace it with presidential authority, but to refocus congressional energies and attention to important legislative duties. Only by stopping many current activities can this succeed. Congressmen will argue that the activities we want them to cease are necessary to control the huge federal bureaucracy, and in this they are probably right. The point, though, is not to make Congress give up control and leave bureaucrats roaming at will, but to give Congress incentive to

limit the powers they delegate to the bureaucracy, and to reclaim their legislative responsibilities.

These reforms are designed to disentangle Congress and the bureaucracy, to break the iron triangle that encrust thinking and enthrone special interests, and to remind Congressmen that they are not a part of a permanent government in Washington, but the humble and temporary representatives of free citizens.



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